



U.S. Department
of Transportation
**Federal Highway
Administration**

FEDERAL-AID HIGHWAYS

Funding Federal-aid Highways

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1. Introduction

Because of a continuing demand for information concerning the funding of Federal-aid highways, the Federal Highway Administration (FHWA) prepared a report, “Financing Federal-Aid Highways,” in January 1974 to describe how Federal-aid highways are funded. The FHWA modified and updated this report in July 1976, May 1979, October 1983, November 1987, May 1992, August 1999, March 2007, and January 2017. The FHWA prepared these updates following enactment of new highway or surface transportation acts to reflect changes made by those acts.

This latest update of the report incorporates changes in funding procedures brought about by the 2012 enactment of Public Law 112-141, the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the 2015 enactment of Public Law 114-94, the Fixing America’s Surface Transportation (FAST) Act. With this update comes a new title—“*Funding* Federal-Aid Highways”—that more accurately reflects the report’s content and focus.

As with previous versions, this report follows the fiscal process from inception in an authorization act to payment from the Highway Trust Fund and discusses the congressional and Federal agency actions that occur throughout that process.

Key terminology

■ **The four “As” and two “Os”.** This report, and the Federal-aid Highway Program (FAHP) more broadly, relies heavily on a few key terms:

- *Authorization.* The term “authorization” is typically used in the context of an authorization bill or act (law): substantive legislation that establishes or continues Federal programs or agencies and establishes an upper limit on the amount of funds for the program or programs. Within such an act, the term may also refer to the program-specific upper limit.
- *Appropriation.* The term “appropriation” is typically used in the context of an appropriations bill or act: a law that typically makes funds available for obligation and expenditure with specific limitations as to amount, purpose, and duration.
- *Apportionment.* For the purposes of this publication as it relates to funding Federal-aid highways, the distribution of funds to States as prescribed by a statutory formula.¹
- *Allocation.* For purposes of this publication as it relates to funding Federal-aid highways, an administrative distribution of funds for programs that are not distributed to States by a statutory formula.
- *Obligation.* The Federal government’s legal commitment (promise) to pay or reimburse a State or other entity for the Federal share of a project’s eligible costs.

- *Outlays.* Actual cash (or electronic transfer) payments made to the State or other entity to pay the entity for eligible costs incurred. Outlays generally are provided as work progresses for the Federal share for approved highway program activities.

The report discusses each of those terms in greater detail in the coming chapters, and appendix A provides a more complete glossary of FAHP-related terminology.

■ **Use of the term “State”.** The overwhelming majority of Federal highway funding is distributed to (and used by) States—a term that in this context encompasses both Puerto Rico and the District of Columbia. However, there are other non-State recipients of Federal highway funding, such as selected U.S. territories and other Federal agencies.

■ **The Department and its operating administrations.** The Department of Transportation encompasses nine “operating administrations,” each of which deals primarily with a specific mode (or aspect) of transportation. In addition to FHWA, this includes the Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Saint Lawrence Seaway Development Corporation. This report uses the respective acronym when referring to one of these operating administrations.

■ **Acronyms for surface transportation authorization acts.** This report refers throughout to a variety of surface transportation authorization laws, including each of those listed below (shown in the order in which they were enacted). When discussing one of these laws, the report relies on the law’s respective acronym.

- Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).
- Transportation Equity Act for the 21st Century (TEA-21).
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).
- Moving Ahead for Progress in the 21st Century (MAP-21).
- Fixing America’s Surface Transportation (FAST) Act.

Structure of this report

The Federal-aid funding lifecycle follows a step-by-step process. As with a construction project, each step builds upon the previous step.

Figure 1 shows the major steps in the lifecycle of Federal-aid highway funding.

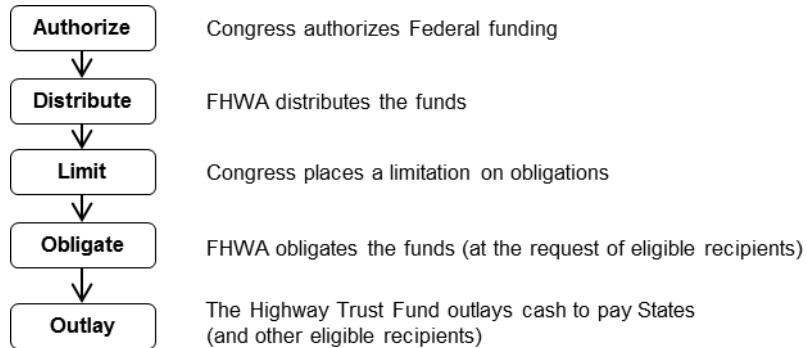


Figure 1. Lifecycle of Federal-aid highway funding.

The structure of this report largely parallels the Federal-aid highway funding lifecycle. Chapter 2 lays the foundation: the authorization process for the FAHP and the contract authority that it creates. Chapter 3 describes how FHWA distributes the authorized funding. Chapter 4 describes how and when FHWA obligates funding at the request of funding recipients (most often States), as well as the Federal budget process and the role of the annual appropriations act. Chapter 5 focuses on the portion of the appropriations act that most impacts the Federal program: an annual obligation limitation. Chapter 6 wraps up the highway funding lifecycle with an examination of the outlay of funding. Finally, Chapter 7 discusses the history and operations of the Highway Trust Fund, which funds the entirety of the FAHP.

The report ends with appendices that provide greater detail on a number of topics mentioned in individual chapters.

2. Authorization of Funding

Every Federal program or activity, including the Federal-aid Highway Program (FAHP), requires legal authority to operate. The authorization act provides that authority, along with related funding, as this chapter will discuss.

It is critical to understand the meaning of the word “program.” First, “program” is used as an umbrella term referring to activities administered by FHWA. When this report uses “program” in this all-encompassing sense, it will use the term “Federal-aid Highway Program,” or “FAHP.” Second, “program” also refers to any one of the separately funded categories that make up the overall FAHP. For example, the National Highway Performance Program (NHPP) and the Surface Transportation Block Grant Program (STBG) each have their own specific and separate funding; consequently, each is considered a program.

In addition to having its own distinct and separate funding, each program has associated with it certain activities for which that funding may be used. These are described in law and are referred to as eligible activities. These activities, often eligible under a number of programs, are not considered programs in the financial sense of the term as used in this report because the legislation does not single out these activities for specific funding.

Authorization act

■ **Overview.** The first and most crucial step in funding the Federal-Aid Highway Program is development of authorizing legislation. An authorization is a statutory provision that *establishes or continues* a Federal agency, activity, or program, and can be for either a fixed or indefinite period of time. A surface transportation authorization act also provides unique *funding* for the FAHP through a special type of Federal budget authority (contract authority) discussed later in this chapter. The funding of other Federal programs may be much more dependent on a second legislative act, known as an appropriations act, than on authorizing legislation. Chapter 4 discusses appropriations acts and their impact on the FAHP.

In addition to authorizing programs and funding, a surface transportation authorization act typically includes a “revenue title.” This is the portion of the law that enables the operation of the Highway Trust Fund (HTF) and provides the revenues to support the programs contained in the act.

■ **History of authorization acts.** Authorizing legislation for highways began with the Federal-Aid Road Act of 1916 and the Federal Highway Act of 1921. These acts provided the foundation for the FAHP as it exists today. A series of multi-year authorization acts have subsequently continued the FAHP. Since 1978, Congress has passed highway authorization legislation as part of larger, more comprehensive, multi-year surface transportation acts. For example, in 2015, Congress enacted the FAST Act. The FAST Act included titles related to Federal-aid highways, innovative project finance, public transportation, transportation

safety, innovation, hazardous materials transportation, multimodal freight transportation, rail transportation, and a newly-established National Surface Transportation and Innovative Finance Bureau.

Surface transportation authorization acts vary in scope and duration. The most significant surface transportation acts are major multi-year laws. For example, ISTEA, enacted in 1991, TEA-21, enacted in 1998,² SAFETEA-LU, enacted in 2005, and the FAST Act, enacted in 2015, each covered a span of five or more fiscal years. In contrast, MAP-21, enacted in 2012, covered two years.

A surface transportation authorization act may also be enacted as a stop-gap funding bill, designed to extend the program and keep it operational while Congress debates more comprehensive authorizing legislation. Congress has passed a number of such “extension acts” during each of the previous several reauthorization cycles.

■ **Recent extension acts.** Following the expiration of ISTEA in 1996, Congress enacted a single extension of the program. Between TEA-21 and SAFETEA-LU, Congress passed a then-unprecedented total of 12 short-term extension acts, varying in duration from two days to eight months. Between SAFETEA-LU and MAP-21 Congress spent almost three years (and 10 extensions) struggling to reach agreement on proposed program changes and to find revenue sources. Finally, Congress employed five extensions, covering a cumulative 14 months, to bridge the gap between MAP-21 and the FAST Act.

Table 1 shows the number and duration of short-term extensions to the FAHP over each of these reauthorization cycles.

Table 1. Extensions to authorization acts.

	Expired on...	Was extended...	For a total of about...	Before enactment of...
ISTEA	9/30/1996	Once	6 months	TEA-21
TEA-21	9/30/2002	12 times	23 months	SAFETEA-LU
SAFETEA-LU	9/30/2009	10 times	33 months	MAP-21
MAP-21	9/30/2014	5 times	14 months	FAST Act

■ **Program changes.** Authorization acts are the primary instruments Congress uses to shape and direct the FAHP—modifying existing programs, adding or eliminating programs, or changing program requirements.

When an authorization act establishes a program, it sets certain ground rules under which the program operates, such as the following:

- 1) The amount of funds available to the program for each fiscal year (or how an amount of funds available for the program is to be calculated);
- 2) A description of how those funds are to be distributed;
- 3) The length of time during which the funds may be used (termed a “period of availability”); and
- 4) A listing of eligible activities.

Each of these can be changed by subsequent acts (authorization or otherwise).

In a major departure from previous reauthorization acts, MAP-21 streamlined the complex array of existing programs into a smaller number of broader core programs. Hence, MAP-21's changes fell more heavily into the "adding or eliminating" category. The FAST Act took a more incremental approach, largely maintaining MAP-21's program structure, with a few notable changes.

The following are some examples of program changes in the FAST Act:

Modifying an existing program. The FAST Act converted the long-standing Surface Transportation Program (STP) into the Surface Transportation *Block Grant* Program (STBG), acknowledging that this program has the most flexible eligibilities among all Federal-aid highway programs. The Act made other modifications to STBG as well, such as adding new eligible activities and increasing the share of the program that is suballocated to sub-State areas based on population. (See discussion in Chapter 3). The FAST Act also continued, with some program modifications, NHPP, the Highway Safety Improvement Program (HSIP), and the Congestion Mitigation and Air Quality Improvement Program (CMAQ).

Adding or eliminating a program. The FAST Act established a new National Highway Freight Program (NHFP) that provides States with highway-focused formula funding for use on freight-related projects.³ It also established a new program (known as FASTLANE), which provides discretionary grants for nationally-significant freight and highway projects.⁴

Modifying requirements. The FAST Act made changes related to highway design standards to increase flexibility and provide for greater accommodation of all highway users. The Act also included a range of provisions designed to increase innovation and improve efficiency, effectiveness, and accountability throughout the process of delivering highway projects.

Beyond changes to program features, authorization acts often contain requirements for studies or reports to Congress. Congress typically requires these in one of two situations: when it is at an impasse regarding the best solution to a problem, or when it lacks sufficient information to formulate a policy. Most of these studies and reports are completed by the departmental agencies with primary oversight over the areas in question.

■ **Authorization of funding.** The other major purpose of authorization acts is to provide funding for programs. These funds are called "authorizations," and are the upper limits of funding made available to a program. The FAST Act authorized a total of \$305 billion for fiscal years (FY) 2016 through 2020 for surface transportation. Of the \$305 billion, \$226 billion (74 percent), or an average of \$45 billion per year, was for highway programs.

Appendix B lists the funding amounts that the FAST Act authorized through FY 2020 for each Federal-aid highway program.

The remainder of this report explains how FHWA distributes FAHP authorizations, the requirements associated with their use, the controls that Congress places on spending, and the role of the HTF.

From bill to law

A surface transportation authorization proposal goes through many stages on its way to enactment. There is usually (but not always) an Administration (executive branch) proposal. Both the House and the Senate must weigh in, and the two chambers must resolve their differences on a compromise bill. Even then, only with the President's signature—or a Congressional override of a President's veto—does an authorization *bill* become an authorization *act* (law).

Figure 2 shows the steps to enactment of an authorization act, and the paragraphs that follow provide additional detail on each step. The recycling bins shown in the figure reflect the many opportunities for failure along the way.

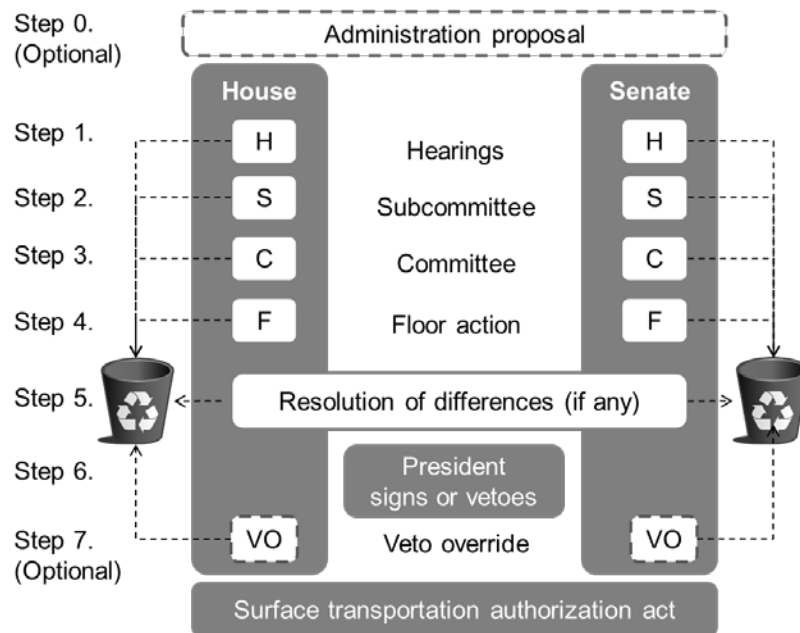


Figure 2. Enactment of an authorization act.

■ **(Optional) Step 0: The Administration proposal.** The Administration (executive branch) is not required by law to propose legislation to reauthorize highway and other surface transportation programs. However, in order to present its position on the future of surface transportation, the Department of Transportation (DOT) normally prepares such a proposal, with affected operating administrations participating in its development. Alternatively, the Administration may provide Congress with less comprehensive input, such as policy papers or more narrowly-targeted legislative text. Regardless of the form of the proposal, as required by Office of Management and Budget (OMB) Circular A-19, the draft is reviewed and approved by OMB and other executive agencies to ensure consistency with Administration policy.

A comprehensive Administration bill prepared by the DOT may be introduced in Congress at the request of the Administration. At least one member of Congress must sponsor the bill and agree to introduce it. Introducing the bill as a courtesy does not necessarily mean that the sponsor endorses all provisions in the proposal.

Congress will consider the Administration bill in formulating its own legislation, and may incorporate entire provisions verbatim, but rarely enacts an entire Administration bill without change.

■ **Committees of jurisdiction.** In each of its sessions, members of Congress introduce a vast number of bills and resolutions that cover a wide array of subjects. To manage this workload, Congress is organized around committees of jurisdiction. These committees vary in size, and each committee’s title usually indicates the general scope of its jurisdiction. They conduct investigations, make studies, issue reports and recommendations, and review and prepare legislative measures on their assigned areas. Most committees also divide their work among several subcommittees with narrower focus and jurisdiction. This committee framework is designed to consolidate decision-making on broad public policy areas.⁵

Responsibility for developing surface transportation legislation rests with specific congressional authorizing committees, and their appropriate subcommittees. Consequently, legislation involving surface transportation matters can occur simultaneously and independently in any of a number of committees in both the House of Representatives and the Senate. Table 2 shows the respective committees of jurisdiction for each surface transportation modal administration and for the HTF and other revenue matters.

Table 2. Jurisdiction over surface transportation authorization.

HOUSE OF REPRESENTATIVES	
Committee	Jurisdiction
Committee on Transportation and Infrastructure	FHWA, FTA, FMCSA, NHTSA
Committee on Ways and Means	Revenue

SENATE	
Committee	Jurisdiction
Committee on Environment and Public Works	FHWA
Committee on Commerce, Science, and Transportation	FMCSA, NHTSA
Committee on Banking, Housing, and Urban Affairs	FTA
Committee on Finance	Revenue

In the House, the Highways and Transit Subcommittee of the Committee on Transportation and Infrastructure (the House T&I Committee) has primary jurisdiction over most aspects of the FAHP, including drafting highway authorizing legislation. The House T&I Committee also has jurisdiction over mass transit and highway safety. The HTF and other revenue matters fall under the purview of the House Ways and Means Committee.

In the Senate, the Subcommittee on Transportation and Infrastructure of the Committee on Environment and Public Works (EPW) has jurisdiction over highway programs and legislation, but not over highway safety or mass transit issues. The Senate Commerce, Science, and Transportation Committee has jurisdiction over safety, while the Banking, Housing, and Urban Affairs

(“Banking”) Committee has jurisdiction over mass transit concerns. Finally, the Senate Finance Committee has jurisdiction over the HTF and other revenue matters.

■**Step 1: Committee hearings.** Congress begins the authorization process by conducting hearings as a springboard for developing authorizing legislation. It normally holds such hearings about nine months to a year before expiration of the current authorization act. The purpose of these congressional hearings is to give interested organizations, citizens, Members of Congress, and the executive branch an opportunity to present their views on the future direction of Federal surface transportation programs, as well as for Congress to develop a record in support of future legislative action.

The House and the Senate work independently on their separate bills, and each body has its own schedule for hearings, committee meetings, and procedural votes. Although they may be developed concurrently, House and Senate surface transportation bills remain separate until brought together in conference committee, much later in the legislative process (see step 5, below).

■**Steps 2 and 3: Committee consideration.** Once the hearings are complete, the committees begin preparation of draft surface transportation legislation, taking into consideration information obtained during the hearings. They may also include elements taken from other proposed surface transportation bills submitted during the current session of Congress and referred to the full authorizing committees. Such bills may be proposed by several groups, including the chairmen or ranking minority members of full authorizing committees or subcommittees, the Administration, or other Members of Congress who have an interest in surface transportation.

Member-introduced bills often concern a specific facet of the program, such as safety initiatives or bridges. In contrast, bills proposed by committee leadership are usually comprehensive, and represent an attempt to reconcile competing views from several sources. A committee leadership bill commonly takes on the name of its principal sponsor, and becomes the foundation for the committee’s draft legislation. It also frequently serves as the focus of additional committee hearings.

A committee considers a bill through a process known as a markup. Depending on a variety of factors, this markup process may begin at either the subcommittee or full committee level. In either case, members mark up (modify, or “amend”) the draft bill until a majority votes to send forward the amended version. The amendment process may involve voting to strike or revise existing language, or to add entire new sections, even to the point of preparing a completely different version (although this is uncommon).

Upon completion of a subcommittee markup, the subcommittee forwards the revised bill to the parent full committee, which in turn holds its own markup session. Once approved by a majority of the full committee, the bill goes to other committees having jurisdiction over some aspect of the program (e.g., for Trust Fund matters, the House Ways and Means and Senate Finance committees would have jurisdiction). The bill is then “reported out” to the full chamber of its respective body of Congress.⁶

When a full committee forwards a bill to its respective full chamber, it typically also provides an accompanying committee report. The report expands upon the legislative language in the bill by providing a plain language explanation of the legislative text and, sometimes, an explanation for the provision. The executive branch and the courts use this report to help determine congressional intent. There are usually separate committee reports for the Senate bill and the House bill. In some cases, though, a committee will not submit a report to accompany its bill.

■**Step 4: Floor action.** The next step is for House and Senate leaders to package together the respective chamber's committee-reported component bills (the Senate EPW Committee's highway bill, the Senate Banking Committee's transit bill, etc.) into a single, comprehensive surface transportation bill. Each chamber then moves its combined product to the floor for further debate and amendment, then final votes.

■**Step 5: Resolution of differences and final passage.** Once the Senate and House pass their respective bills, they work to reconcile differences between the two bills and arrive at a mutually acceptable compromise. This reconciliation process takes one of two forms:

- 1) *Amendment exchange.* For a variety of reasons, the once-rare process of amendment exchange has become much more common in recent sessions of Congress. In an amendment exchange, one chamber (e.g., the House) takes up the other chamber's bill, amends it, and then passes the amended version. If the amended version is acceptable to the other chamber, then that chamber passes it as well. Otherwise, the second chamber amends the bill further, passes *that* newly-amended bill, and returns it to the original chamber. The process continues until both chambers agree to sign-off on an identical bill—usually after substantial back-channel negotiations.
- 2) *Conference committee.* Rather than exchanging amendments, the House and Senate may resolve their differences through a conference committee. In a conference committee, members of both chambers meet to formally negotiate a compromise version of the two bills. Such a committee is usually composed of members that represent the relevant committees of jurisdiction. Normally, there are many similarities between the two bills, and the members spend the conference working out the differences.

Upon agreement by the conference committee, a single bill with its attendant report is returned to each body of Congress for final passage. Conference bills must be voted on in their entirety exactly as presented by the conferees; neither the House nor Senate may amend the bill further.

■**Step 6: Presidential signature or veto.** When the conference bill has passed both the House and Senate, it is transmitted to the President for signature. The President may either sign the bill into law or veto (reject) it. Only one surface transportation bill—the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)—has ever been vetoed by the President.

■**(Optional) Step 7: Veto override.** The House and the Senate may vote to override the President's veto and enact the bill into law. A two-thirds majority vote in each chamber is required to override a presidential veto. Congress met this threshold for STURAA of 1987, overriding President Reagan's veto of that bill.

Budget authority

Once Congress has authorized funding, the question arises of *when* it becomes available for obligation. The authority provided by Federal law to enter into financial obligations that will result in immediate or future outlays involving Federal government funds is called “budget authority.” There are two main types of budget authority: appropriated budget authority (ABA) and contract authority (CA).⁷

Figure 3 shows the procedural steps in the “lifecycles” of ABA and CA, highlighting the differences between the two.

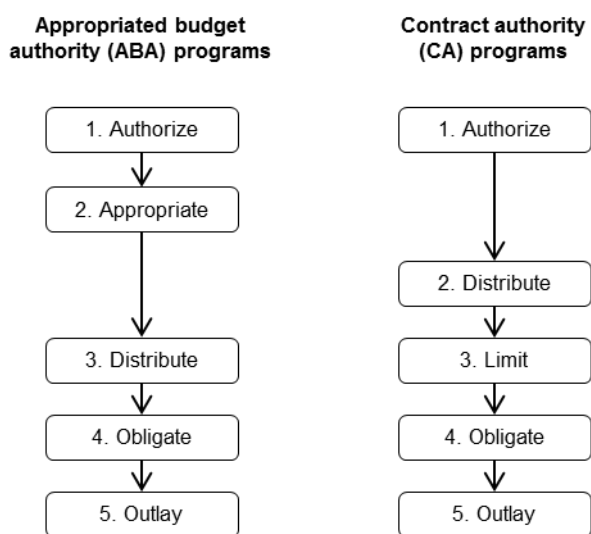


Figure 3. Comparative lifecycles of appropriated budget authority and contract authority.

■ **Appropriated budget authority.** Most Federal programs operate using appropriated budget authority, which requires two acts of Congress to implement. The congressional passage of an authorization act is only the initial step. The authorization act, in itself, does not permit the program to begin, but only establishes the program structure and sets an upper limit on program funding. The program may start (i.e., the funds may be distributed and used) only after passage of a second piece of legislation: the appropriations act.

In the appropriations act, Congress appropriates (makes available) the funding amount that can actually be used for the program. It is at this point that the program can proceed. Under Congress’s budgetary rules, the appropriated amount may be equal to, or lower than, the original amount authorized in the authorization act.

One example of an ABA program in the FAST Act is the Nationally Significant Federal Lands and Tribal Project Program. The FAST Act *authorized* \$100 million for each of FY 2016-2020 for the program, but this funding is subject to appropriation from the General Fund. Accordingly, FHWA may only distribute funding for this program if Congress subsequently *appropriates* those funds in an appropriations act.

An appropriations bill may sometimes include a provision to appropriate funds for a program or project for which there is no supporting authorization, or in an amount that exceeds the original authorized funding limits. Such actions are against the budgetary rules set by Congress and can be contested by a single member of Congress raising an objection (called a point of order) against the measure. If no member raises this sort of objection (or if Congress votes to waive the point of order), and Congress passes the legislation, the measure stands.

An example of this is U.S. DOT's Transportation Investments Generating Economic Returns (TIGER) program, which offers capital grants for a wide range of surface transportation projects. Congress has never authorized the TIGER program within an *authorization* act. Nonetheless, it has appropriated a cumulative \$5.1 billion through eight rounds of TIGER funding in *appropriations* acts. These appropriations have served as the legal basis for DOT's implementation of TIGER.

See Chapter 4 for additional detail on appropriations acts.

■ **Contract authority.** Most of FHWA's programs operate with a special type of budget authority called contract authority (CA). Congress has provided CA for the highway program for almost a century, beginning with the FY 1923 appropriations act for the Post Office Department.⁸ Through CA, authorized amounts are available for obligation according to the provisions of the authorization act without further legislative action. The use of CA gives the States advance notice of the size of the Federal-aid program at the time an authorization act is enacted. This eliminates much of the uncertainty contained in the authorization/appropriation sequence that applies to ABA.

In 1974, the Congressional Budget and Impoundment Control Act of 1974 (Budget Act) was enacted. One of the main purposes of that act was to give Congress more effective control over Federal spending. As described in Chapter 4, Congress annually meters spending through appropriations acts. Therefore, the Budget Act sought to reduce the number of programs that received budget authority outside the control of appropriations acts. To do this, the Budget Act made it "out of order" (against the rules of the House and the Senate) to consider a bill that would authorize such spending.

However, Congress also realized that there were certain programs, such as the FAHP, that required advance knowledge of the size of future funding commitments to do long-range planning and to operate smoothly from year-to-year. Thus, the Budget Act permits several exceptions to the standard two-step, authorization/appropriation process. One of these is for programs for which new budget authority is derived from a trust fund that receives 90 percent or more of its receipts from user-related taxes.⁹ The HTF qualified under this exception, and Congress continued to authorize contract authority for the FAHP.¹⁰

The law that governs the majority of Federal-aid highway programs is located in title 23 (the highway title) of the United States Code. A provision in that title (23 U.S.C. 118(a)) makes all funds that are authorized from the HTF under chapter 1 of title 23 "available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first." This provision indicates that any such funds are contract authority. And as

most Federal-aid highway programs located outside of chapter 1 incorporate 23 U.S.C. 118(a) by reference,¹¹ it gives those programs contract authority as well. (Chapter 3 of this report discusses apportionments and allocations in more detail.)

As with other types of budget authority, CA is not cash; it is “funding” that the Federal government, on behalf of a State or other grant recipient, obligates (commits) to a given project. Once the Federal government makes an obligation, it is legally bound to liquidate (pay) that obligation once the bill comes due. However, the authorization act does not appropriate the cash to liquidate an obligation made under contract authority. Chapter 4 describes the piece of legislation that does this (the appropriations act), and Chapter 6 describes the process through which the HTF outlays that cash to pay States’ bills.

Homes for Federal highway law

■ **Title 23, United States Code.** New surface transportation authorization acts amend title 23 of the United States Code (U.S.C.). Title 23, U.S.C., is titled “Highways” and includes a systematic—or “codified”—arrangement of most of the laws that govern the FAHP. Generally, title 23 embodies those substantive provisions of highway law that Congress considers to be continuing, and which need not be reenacted each time the FAHP is reauthorized. Each new surface transportation act specifies which sections of title 23 Congress wishes to repeal (eliminate), add, or amend.

■ **Uncodified provisions of law.** Some provisions of surface transportation law—for example, authorization amounts or certain pilot programs—are not incorporated into title 23. These provisions “live” within the confines of the act that authorized them, but they have the same legal standing as those located in title 23. Furthermore, highway projects and activities also must comply with provisions in other laws outside of title 23 (the Uniform Relocation Act, and the Americans with Disabilities Act, etc.).

The FAST Act included a number of uncodified provisions. Examples include the newly-authorized Nationally Significant Federal Lands and Tribal Projects Program,¹² as well as the authority for a Governor of an international land border State to reserve a portion of his or her State’s STBG funding for border infrastructure projects.¹³

3. Distribution of Funding

Chapter 2 described the foundation for the Federal-aid Highway Program (FAHP): the authorization act. This chapter covers the two different ways in which FHWA distributes the funds authorized for the FAHP’s various constituent programs: *apportioning* funds by statutory formula and *allocating* funds on some other basis. This includes a discussion of various topics that affect the distribution of these funds, such as penalties and set-asides.

This chapter also describes two general budget controls that apply (in selected circumstances) to the FAHP: rescission and sequestration. For a discussion of a third type of budget control, the obligation limitation, see Chapter 5.

Apportionments

■ **Characteristics.** Historically FHWA has referred to an “apportionment” as the distribution of funds using a formula provided in law. An apportionment is usually made on the first day of the Federal fiscal year (October 1) for which the funds are authorized.¹⁴ At that time, FHWA makes the funds available for obligation by the State in accordance with Federal law.

Each year, FHWA issues an apportionment certificate for the FAHP, generally to the State transportation agency. The certificate officially notifies the State of the new funding available to it for each program. As described earlier, this funding is contract authority, not cash, and represents Federal budgetary resources that are eligible to be paid to the State. Chapter 6 describes the process through which the Federal government eventually pays cash to liquidate an obligation of contract authority.

Once FHWA makes an apportionment to a State, there are typically only two situations in which FHWA may withdraw the funding.¹⁵ The first is a statutory rescission—an action by Congress that is described later in this chapter. The second is if the funding lapses. Lapsing of funding is described in Chapter 4.

■ **Overview of apportionment.** For much of the life of the FAHP, Federal law set a formula for each apportioned program, and each State received a total Federal apportionment equal to the sum of its apportionments under each of these program-specific formulas. This paradigm shifted under MAP-21. MAP-21 instituted a one-formula process, in which FHWA:

- 1) Uses a formula to calculate an initial lump sum amount for each State’s Federal-aid apportionment; then
- 2) Divides the State’s lump sum among different programs based upon percentages defined in law.

The FAST Act maintained MAP-21’s general approach to apportionment. As under MAP-21, the FAST Act authorized a single combined national amount for each year for all the apportioned highway programs: the National Highway Performance Program (NHPP), Surface Transportation Block Grant Program

(STBG), Highway Safety Improvement Program (HSIP), Railway-Highway Grade Crossings Program (funded via a set-aside from each State's HSIP apportionment), Congestion Mitigation and Air Quality Improvement Program (CMAQ), Metropolitan Planning Program, and a new National Highway Freight Program (NHFP). Similarly, as under MAP-21, apportioned funds account for the overwhelming majority (in this case, 92 percent) of all FAST Act highway funds. Of this combined amount, FHWA calculates the *share* of funding to apportion to each of the States. In some cases, FHWA modifies those shares slightly, based on States' relative contributions to the HTF; for more on this, see the discussion of "Attribution to the States and the question of 'equity'" in Chapter 7. After determining each State's share, FHWA then divides that amount among the individual apportioned programs

Appendix C provides additional detail on this process.

■ **Penalties.** In order to enforce certain national priorities, Congress has established a number of statutory penalties. If a State fails to comply with a required provision of law, these penalties allow, and in some cases require, the Secretary to take action that prevents a State from receiving or using its full apportionment. Potential penalties include the following:

Withholding of apportionments. Federal law requires FHWA to withhold a specified share of the apportionment from any State that fails to meet certain requirements, such as minimum drinking age, zero blood alcohol concentration (BAC) tolerance for minors, and commercial driver's license provisions. For funds that are withheld, there may be a specific period of time by which the State must come into compliance before the withheld funds will lapse. In some cases the lapse occurs immediately. (See the discussion of lapsing in Chapter 4.)

Transfer of apportionments. Another type of penalty situation requires FHWA to transfer a portion of the noncompliant State's apportionment to another program within the State. An example is the requirement to transfer funding from STBG to NHPP if a State fails to maintain minimum Interstate pavement conditions.¹⁶

Dedication of apportionments. In some cases, FHWA must set aside a portion of a noncompliant State's apportionment, to be obligated only for the projects that will help bring the State into compliance. An example of this type of action is the set-aside of NHPP and STBG funds if a State is not in compliance with bridge and tunnel inspection standards.¹⁷

Suspending use of apportionments or project approval. FHWA may also impose a penalty on funds that it has already apportioned. For example, if a State fails to properly maintain a project financed with Federal-aid funds, FHWA may freeze (refuse to allow) project approvals in that State.¹⁸

Appendix D provides a complete list of penalties associated with FHWA programs.

■**Set-asides.** Federal highway law requires States to use certain sums of their apportionments only for special purposes.

State planning and research (SPR). Two percent of a State’s NHPP, STBG, HSIP, CMAQ, and NHFP funds may only be used for planning and research activities. One-fourth of this amount must be used for research, development, and technology transfer unless the State certifies that transportation planning expenditures will require more than 75 percent of the SPR amount (and the Secretary accepts the certification).¹⁹

Transportation Alternatives (TA). FHWA sets aside a portion of each State’s STBG apportionments to fund TA. Under MAP-21, Federal law and FHWA referred to this program as the “Transportation Alternatives Program,” or “TAP.”²⁰

Off-system bridges. Bridges that are not located on Federal-aid highways are sometimes referred to as “off-system bridges”. Federal law requires FHWA to set aside for these bridges an amount of a State’s STBG apportionment equal to 15 percent of the State’s fiscal year (FY) 2009 Highway Bridge Program apportionment. FHWA may waive or reduce this requirement if it determines that this expenditure is unnecessary in a particular State.²¹

In addition to these statutorily-*required* set-asides, the FAST Act authorizes the Governor of a State with an international land border, at his or her discretion, to reserve a specified portion of the State’s STBG funding for border infrastructure projects.²²

■**Further distribution.** To promote the fair and equitable use of funds and to meet certain priorities, States are required by law to further distribute some programs within the State.

Suballocation of Surface Transportation Block Grant Program funds. After applying the SPR and TA set-asides, FHWA is required by law to reserve a specified percentage of a State’s remaining STBG funds for use in the following areas, in proportion to the relative share each area constitutes of the State’s population:²³

- 1) Urbanized areas of the State with a population greater than 200,000 (further suballocated to each such area within a State based on the population of the area²⁴);
- 2) Areas of the State with a population of 5,001 to 200,000; and
- 3) Areas of the State with a population of 5,000 or fewer.

Under the FAST Act, this specified percentage varies by year (51 percent in FY 2016; 52 percent in FY 2017; 53 percent in FY 2018; 54 percent in FY 2019; 55 percent in FY 2020).²⁵ The remaining STBG funds (including the off-system bridge set-aside) may be used anywhere in the State.²⁶

Appendix E outlines the flow of funds for STBG.

Suballocation of Transportation Alternatives funds. After TA funds are apportioned to a State, the State may either use part of its TA apportionment to fund the Recreational Trails Program or “opt out” of the Recreational Trails set-aside. A State that chooses to fund Recreational Trails must set aside for that purpose an amount equal to its FY 2009 Recreational Trails apportionment.²⁷

After accounting for the Recreational Trails set-aside, FHWA reserves 50 percent of a State’s remaining TA funds for use in the following areas, in proportion to the relative share each area constitutes of the State’s population:

- 1) Urbanized areas of the State with a population greater than 200,000 further suballocated to each such area within a State based on the population of the area;
- 2) Areas of the State with a population of 5,001 to 200,000; and
- 3) Areas of the State with a population of 5,000 or fewer.

The remaining 50 percent of TA funds may be used anywhere in the State.²⁸

Appendix F outlines the flow of funds for TA.

Disadvantaged Business Enterprises. Unless the Secretary determines otherwise, not less than 10 percent of the FAST Act authorizations for highway, transit, and research programs must be spent with small business concerns owned and controlled by socially and economically disadvantaged individuals.²⁹

■ **Transferability.** States may have varying needs or priorities in the use of Federal-aid highway program funds. In recognition of this, Federal law provides flexibility by permitting States to make transfers among certain apportioned highway programs.

Under 23 U.S.C. 126, a State may transfer up to 50 percent of its funding under any apportioned program to any other apportioned program, with some exceptions. Appendix G contains a list of transfers and exceptions.

For ease of administration, the law also allows States to request that the Secretary transfer funds among entities (e.g., between FHWA and the Federal Transit Administration, and from one State to another or to FHWA to fund one or more eligible projects). In these instances, the transferred funds are still used for the original purpose; they are just administered by a different entity.

Allocations

The distribution of Federal-aid highway funding on any basis *other* than a statutory formula is called an allocation. FHWA may make an allocation at any time during the fiscal year (as compared to apportionments, which FHWA, by law, makes on October 1). The FHWA also retains some funding, for example, funds for the agency's administrative expenses and some research activities.

In most cases, FHWA divides allocated funds among States (or other eligible entities) for qualifying projects based on criteria provided in law. Some allocations are made entirely according to provisions in the law. Others, such as the FASTLANE grant program,³⁰ authorize the Secretary to make discretionary grant awards to eligible recipients. Because of the limited funding for these programs, not every State will receive an allocation in a given fiscal year. If a State receiving an allocation does not use it within a specified period of time, FHWA may withdraw the funds by administrative action and reallocate them to other States.

Allocated programs and funding retained by FHWA combine to account for approximately 8 percent of FAST Act highway funding. Appendix B lists these programs (and apportioned programs, as well).

Prior to MAP-21, Congress frequently directed FHWA to allocate specific amounts of funding to particular projects, a practice known as “earmarking.” Congress did this either in legislative language, or by including statements of congressional intent in the committee reports that accompanied the legislation. For example, in SAFETEA-LU, enacted in 2005, Congress directed funding to individual projects under programs such as High Priority Projects³¹ and Transportation Improvements.³² In more recent years, House and Senate rules have prohibited earmarking. As a result, neither MAP-21 nor the FAST Act contained highway earmarks.

Rescission

Through legislation, Congress may cancel an unused balance of previously authorized funds. This is called a rescission: a reduction in law of budgetary authority before that authority would otherwise expire. For example, Congress has required rescissions under a number of surface transportation authorization acts.

SAFETEA-LU. When SAFETEA-LU was enacted in 2005 it included a provision directing FHWA to rescind \$8.5 billion in States' unobligated highway apportionments on the last day of the Act (September 30, 2009).³³ Prior to the rescission taking effect, Congress twice modified this requirement through later-enacted laws,³⁴ and FHWA ultimately rescinded \$8.7 billion in September 2009. Notably, in March 2010 Congress *restored* the rescinded amounts through yet another law,³⁵ and FHWA returned the funding to the original apportionments.

FAST Act. The FAST Act included a provision directing FHWA to rescind \$7.6 billion in States' unobligated highway apportionments on July 1, 2020.

In recent years, Congress has also enacted rescissions in appropriations acts. Some of these rescissions have targeted particular programs or categories of programs—for example, rescissions of prior-year earmarked funding, or of unobligated prior-year highway apportionments (similar to the rescission in SAFETEA-LU). Other appropriations acts have rescinded funding via across-the-board cuts. Congress

uses these cuts to bring the total amount appropriated in all the appropriations acts for the fiscal year into line with the overall amount agreed to in the budget resolution, or with some other spending target. The specifics of the cuts have varied.

Once funds are eliminated (by any mechanism) they cannot be obligated.

Sequestration

Sequestration is the cancellation of budgetary resources under a presidential order (but based on a legal requirement). Sequestration occurs when spending exceeds a limit or target amount and there is an across-the-board reduction in spending. Congress has required sequestration under four different acts:

■ **Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA).** The BBEDCA, often called Graham-Rudman-Hollings for its Congressional authors, was enacted to set out a process for achieving a balanced budget by FY 1991. The BBEDCA established a maximum deficit for each of FYs 1986-1991, with a target of no deficit in 1991.³⁶ At the time, it was anticipated that Congress would act to ensure that the deficit targets would be met each year. Nonetheless, BBEDCA provided for sequesters to enforce the maximum deficit target, should Congress fail in that regard.

Under BBEDCA, half of any necessary cuts were required to be from defense spending and half from domestic spending, with the cuts applied proportionally across the covered programs, projects, and activities.³⁷ For FHWA, cuts applied to most programs, including both appropriated budget authority and contract authority, obligation limitation (including the limitation on general operating expenses), and the loan limitation for the Right-of-Way Revolving Fund. In FYs 1986 and 1990, the Federal budget deficit targets were exceeded. In response, the President issued a sequester order for each of these years, reducing domestic spending (including highway spending) by 4.3 percent for FY 1986 and 5.3 percent for FY 1990.

■ **The Budget Enforcement Act (BEA) of 1990.** The BEA amended BBEDCA, replacing the deficit targets with caps on Federal discretionary budget authority and outlays and “pay-as-you-go” requirements which required that Congressional actions affecting mandatory spending or revenues be at least deficit-neutral. Contract authority from the HTF is considered mandatory (rather than discretionary) spending, so Federal-aid highway contract authority was exempt from sequestration to enforce the discretionary caps. However, *obligation limitations* for HTF programs were subject to sequester under the caps.

The discretionary cap was exceeded for FY 1991, requiring the President to issue a sequester order with an across-the-board reduction of 0.0013 percent of domestic discretionary accounts. That order reduced obligation limitations for the FAHP by approximately \$200,000.

The BEA’s discretionary caps continued through FY 2002, and the pay-as-you-go requirements continued through FY 2006, but no further sequesters took place. In several instances during those periods, a sequester would have occurred under the discretionary limits and pay-as-you-go requirements. However, Congress prevented the potential sequesters through separate legislation.

■**The Pay-As-You-Go (PAYGO) Act of 2010.** In 2010 and 2011 Congress passed two laws that re-enacted budget controls. The first of these was the PAYGO Act of 2010, which amended BBEDCA to re-establish pay-as-you-go requirements on legislation affecting mandatory spending and taxes, with sequestration of mandatory budget authority as an enforcement tool.

The PAYGO Act of 2010 exempted from its sequestration requirements a number of programs funded with contract authority from a trust fund, as long as the contract authority was subject to an obligation limitation. This exemption protects the vast majority of Federal-aid highway funding from sequester. However, two elements of the FAHP are subject to sequester under the PAYGO Act because they are exempt from obligation limitations:

- 1) A small portion (\$639 million per year) of the NHPP; and
- 2) The Emergency Relief (ER) Program (\$100 million per year).

Additionally, transfers to the HTF to maintain its solvency are considered mandatory, and are therefore also subject to sequestration under the PAYGO Act.

■**The Budget Control Act (BCA) of 2011.** The second of the recent acts to re-establish budget controls was the BCA of 2011. The BCA re-established annual caps on discretionary budget authority, with sequestration of such budget authority if the caps are exceeded. The FAHP is funded primarily with contract authority, which falls on the mandatory side of the budget. However, supplemental appropriations from the General Fund for the ER Program (beyond the \$100 million of annual contract authority) fall on the discretionary side of the budget and are subject to sequester if the discretionary caps are exceeded.

Congress also included a provision in the BCA of 2011 to create the Joint Select Committee on Deficit Reduction, often referred to as the “Super Committee.” The Committee was to propose legislation to reduce the deficit by \$1.5 trillion over the period of FY 2012 through 2021. If the Committee was unable to reach agreement on a proposal, or if Congress failed to enact the legislation, the BCA would impose a special one-time sequester in FY 2013, followed by annual sequesters in each of FY 2014 through 2021. Subsequent laws extended this sequester requirement through FY 2024. As with the PAYGO Act of 2010, these sequesters would exempt contract authority subject to an obligation limitation—protecting the vast majority of the Federal-aid highway program from sequestration.

The Super Committee failed to reach agreement by the required deadline, triggering the BCA’s sequester mechanism. For FHWA this has, to date, led to the sequestration of the amounts indicated in Table 3.

Table 3. Amounts sequestered under the Budget Control Act of 2011

FY	Sequester of...
2013	<ul style="list-style-type: none">• \$33 million in NHPP contract authority• \$5 million in ER contract authority• \$316 million of that year's General Fund transfer to shore up the solvency of the Highway Account of the HTF• on the discretionary side of the budget, \$101 million of a supplemental appropriation for the ER Program
2014	<ul style="list-style-type: none">• \$46 million in NHPP contract authority• \$7 million in ER contract authority• \$749 million of that year's General Fund transfer to the Highway Account of the HTF
2015	<ul style="list-style-type: none">• \$47 million in NHPP contract authority• \$7 million in ER contract authority
2016	<ul style="list-style-type: none">• \$43 million in NHPP contract authority• \$7 million in ER contract authority

4. Obligation of Funding

At this point, FHWA has distributed Federal funds (but not cash) to the States as prescribed by the authorization act. This chapter discusses how long those funds remain available to the State and what happens if the State does not use the funds in a timely manner. It also describes the Federal share of a project's cost and the commitment of the Federal government to pay a State for the Federal share of its eligible expenses. Finally, the chapter covers the Federal budget process and appropriations legislation.

What is an obligation?

An obligation is a legal commitment: the Federal government's promise to pay a State for the Federal share of a project's eligible cost. This commitment occurs when FHWA approves the project and executes the project agreement.³⁸ Obligated funds are considered "used" even though no cash is transferred.

Obligation also is the step in the funding process under contract authority programs where Congress most commonly imposes budgetary controls. This usually involves the imposition of limitations on Federal-aid Highway Program (FAHP) obligations. Chapter 5 describes these limitations.

Availability

■ **Period of availability.** Funding for many Federal programs terminates at the end of the fiscal year for which it is appropriated. Federal-aid highway funds, in contrast, are typically available for obligation (use) for more than one year. When FHWA makes a new apportionment or allocation for an ongoing program, it adds that amount to the program's unused balance from previous years. If, in an authorization act, Congress chooses to discontinue a program, any unused balance continues to be available for the period of availability that originally applied to the discontinued program.

Some types of funds—known as "no-year" or indefinite funds—are available until they are expended. However, as specified in law, under most of the major Federal-aid highway programs, funds are available for obligation "...for a period of three years after the last day of the fiscal year for which the funds are authorized...";³⁹ thus, they are available for obligation for four years. For example, fiscal year (FY) 2016 Federal-aid highway funds that FHWA apportioned on October 1, 2015, are available for obligation until September 30, 2019. Note that outlays (expenditures) associated with timely-obligated funds may occur beyond the four-year obligation period.

Figure 4 shows the typical period of availability of funding for Federal-aid highway funding.

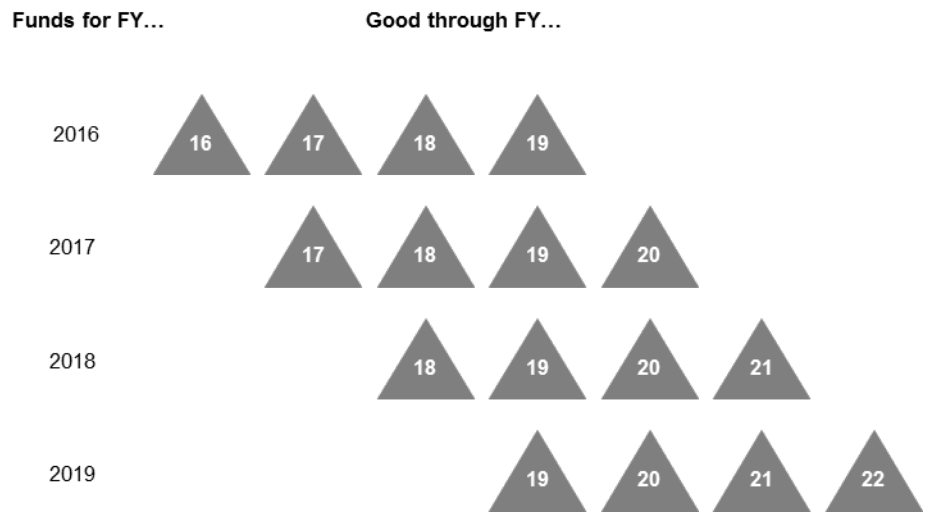


Figure 4. Typical period of availability for Federal-aid highway funding.

■ **Lapsing.** If FHWA does not obligate a particular year’s funding (at the request of the State or other funding recipient) within the period of availability, the authority to obligate any remaining amount lapses—it is no longer available.⁴⁰ Since the lapse is of funding (budgetary resources), rather than cash, a State does not need to return any cash to the Federal government at that time; it simply has lost the opportunity to obligate the lapsed amount.

When obligating funds, FHWA uses a “first-in, first-out” method. This method assumes that the oldest funds in a given category are obligated first, minimizing the risk of a funding lapse. States also manage their use of FAHP funding to reduce the likelihood of lapsing.

Federal share

The Federal government typically does not pay for the entire cost of construction or improvement of Federal-aid highways. Therefore, the State or local project sponsor must usually “match” Federal funds with funds from other sources. The maximum share of an eligible project’s costs that the Federal government will cover is known as the Federal share. In almost all cases a State may, at its option, reduce the Federal share for a particular project by contributing more non-Federal resources than required by law.

■ **Federal share percentages.** Unless otherwise specified in the authorizing legislation, most projects will have an 80 percent Federal share.⁴¹ However, a number of statutory provisions can modify a program’s basic Federal share. Examples include the following:

Interstate System. The Federal share for projects on the Interstate system is 90 percent (unless the project adds lanes that are not high-occupancy-vehicle or auxiliary lanes, in which case the Federal share will revert to the 80 percent level).⁴²

Sliding scale. States with large amounts of Federal lands have their Federal share of certain programs increased up to 95 percent in relation to the percentage of their total land area that is under Federal control.⁴³

100 percent Federal funding. Certain programs, such as the Federal Lands Transportation Program, the Tribal Transportation Program, and the Territorial Highway Program, provide a 100 percent Federal share for projects. In other cases, programs provide full Federal funding to support specific types of projects, such as Emergency Relief projects (for certain emergency repairs made within 180 days of the event causing the need for such repairs),⁴⁴ Highway Use Tax Evasion projects,⁴⁵ and certain safety projects.⁴⁶ The FAST Act also offered a Federal share of up to 100 percent for projects with innovative project delivery methods.⁴⁷

Tapered Match. In some cases, FHWA may approve a “tapered” match for a project. Under tapered match, the Federal share may vary on individual progress payments on a project, as long as the total contribution of Federal funds does not exceed the maximum Federal share authorized for the project.⁴⁸ These progress payments are permitted as long as a project agreement has been executed pursuant to 23 U.S.C. 106.⁴⁹

Appendix H shows the basic Federal share for selected programs, along with provisions that may modify that share.

■ **Sources of matching funds.** The funds required to match Federal funding can come from any or all of the following sources:

- 1) State and/or local governments.
- 2) Private contributions.
- 3) Credit for donated private property or land lawfully obtained by the State or local government without the use of Federal funds.⁵⁰
- 4) Toll revenue credits (but not for projects funded under the Emergency Relief program).⁵¹
- 5) Other Federal agencies, if specifically authorized in law. For example, Federal land management agencies may use their own funds for the non-Federal share of a project funded under title 23, United States Code (highways) or chapter 53 of title 49, United States Code (public transportation).⁵²
- 6) Federal Lands Transportation Program and Tribal Transportation Program funds (for Federal-aid projects that provide access to or within Federal or tribal lands).⁵³
- 7) Recreational Trails funds (but only to match other Federal program funds for purposes that would be eligible under the Recreational Trails program).⁵⁴
- 8) Funds from any other Federal program (but only to fulfill the non-Federal share requirement for Recreational Trails projects, for purposes eligible under the program from which the funds are derived).⁵⁵

Appropriations act

An appropriations act is a congressional action that makes funds available for obligation and expenditure with specific limitations as to amount, purpose, and duration. As described in Chapter 2, most Federal programs are funded through appropriated budget authority, courtesy of an appropriations act. However, as the FAHP operates under contract authority, the appropriations act serves a different function for FHWA.

Four elements of an appropriations act most significantly impact the Federal-aid Highway Program:

- 1) Appropriated budget authority (if any);
- 2) A limitation for the year on obligations for the Federal-aid programs that have contract authority;
- 3) A limitation for the year on FHWA's obligation of administrative funding (known as the "limitation on administrative expenses," or "LAE"); and
- 4) An appropriated amount of "liquidating cash," which FHWA requires to liquidate (pay) FAHP obligations for which bills are submitted.

To become law, an appropriations bill must pass through each of the steps required on an authorization bill (see "From bill to law" in Chapter 2). The appropriations process differs from the authorization process in three substantial ways, though. First, an appropriations bill is an outcome of the broader Federal budget process, where it is preceded by the President's Budget request and a congressional budget resolution. Second, an appropriations bill falls under the jurisdiction of different congressional committees than an authorization bill. Third, based on long-standing precedent, an appropriations action must originate in the House of Representatives, rather than the Senate. An authorization bill, in contrast, may originate in either of the two chambers.

Federal budget process

As shown in figure 5, the Federal budget process has three main phases. First, the Administration prepares and submits to Congress the President's Budget request. Next, through a congressional budget resolution, the House and Senate agree on the total amount of Federal spending for the fiscal year. Finally, the two chambers develop and pass one or more appropriations bills, consistent with the constraints set by the budget resolution. These bills go to the President, who signs them into law.

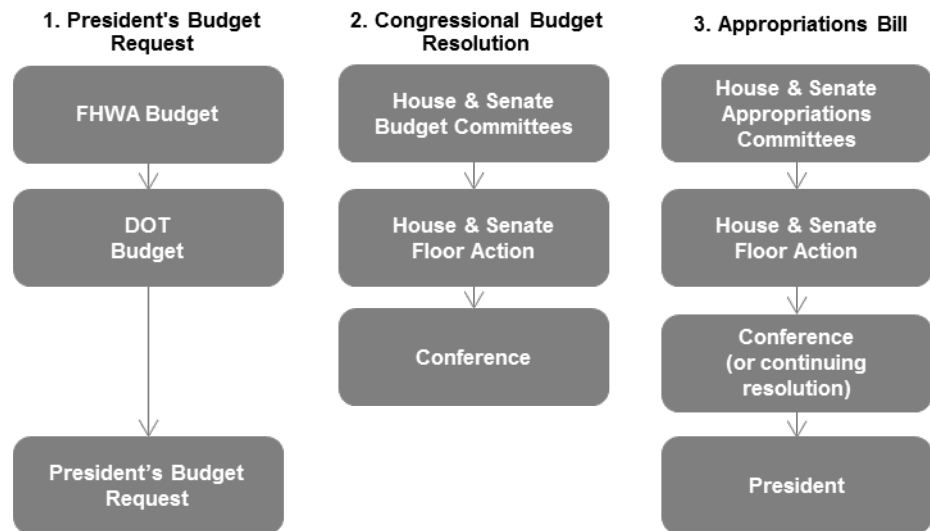


Figure 5. Federal budget process.

■ **President's Budget request.** The executive branch begins the Federal budget process by developing the President's Budget request. FHWA typically starts developing its portion of the budget in the spring, about 1½ years before the beginning of the fiscal year being addressed. Among its contents, the FHWA budget includes a proposal for each of the following:

- 1) Appropriated budget authority (if FHWA is requesting any);
- 2) An obligation limitation for the FAHP;
- 3) An LAE, based on FHWA's estimate of the funding it will need to run the agency and oversee the FAHP; and
- 4) An amount of liquidating cash to be appropriated.

Chapter 5 discusses the obligation limitation. Chapter 6 describes liquidating cash and the projections on which the Administration relies when requesting the amount for a fiscal year.

Typically in June, FHWA submits its budget proposal to the Office of the Secretary of Transportation. The Department reviews FHWA's budget proposal and provides any changes in a process known as "passback". FHWA may appeal the passback, though the Department makes the final determinations. The Department then incorporates FHWA's proposal, as revised via passback, into the broader departmental budget, then submits that budget to the Office of Management and Budget (OMB).

Once all of the executive agencies have developed their respective budgets and have the approval of OMB (including a second passback process), the budgets become part of the President's Budget request. By law, the President must submit his or her budget request to Congress on or before the first Monday in February, less than nine months before the fiscal year begins. The Constitution grants Congress the "power of the purse"—the authority and responsibility to pass laws that govern Federal spending—and the President's budget is simply a proposal. Nonetheless, throughout the appropriations process the President will frequently state his or her position on the budget legislation under consideration in Congress.

■ **Committees of jurisdiction.** As with the authorizing process, Congress is divided into committees of jurisdiction for developing the budget of the United States, including both the Congressional budget resolution and the annual appropriations bills.

The House and the Senate each have a Committee on the Budget. These committees, established by the 1974 Congressional Budget and Impoundment Control Act, are charged with drawing up budget resolutions and shepherding them through the respective chambers.

The House and Senate also each have a Committee on Appropriations, which is responsible for developing appropriations legislation. Each of these committees has twelve subcommittees, and each of those subcommittees produces an appropriations bill for its area of jurisdiction—yielding a total of 12 appropriations bills per year. Appropriations legislation for transportation (including FHWA) is under the primary jurisdiction of each chamber’s subcommittee on Transportation, Housing and Urban Development, and Related Agencies (THUD).

Table 4 shows the relevant committees of jurisdiction.

Table 4. Jurisdiction over the federal budget and surface transportation appropriations.

HOUSE OF REPRESENTATIVES	
Committee	Jurisdiction
Committee on the Budget	Congressional Budget Resolution
Committee on Appropriations	All appropriations
Subcommittee on Transportation, Housing and Urban Development, and Related Agencies (THUD)	THUD appropriations

SENATE	
Committee	Jurisdiction
Committee on the Budget	Congressional Budget Resolution
Committee on Appropriations	All appropriations
THUD Subcommittee	THUD appropriations

■ **Congressional budget resolution.** In the spring, Congress formulates its own view of the Federal budget, using the President’s budget request as input. The first major Congressional action is development of a Congressional budget resolution. Once approved, this resolution guides all congressional action when developing legislation for the next year. It sets high-level spending and tax levels, and explicitly sets a deficit or surplus level for the year. However, it does not set Department-level budgets—a task reserved for the follow-on appropriations bills.

After holding hearings on the President’s Budget request, the House and Senate Budget Committees each develop and debate a budget resolution. The resolution moves through the committee, then to the floor of the full chamber. As with an authorization bill, a budget resolution must be passed in identical form by both the House and the Senate. Therefore, the two bodies must resolve differences between

House- and Senate-approved budget resolutions via either an exchange of amendments or a conference committee.

Budget resolutions are not law; they simply govern subsequent Congressional appropriations activity. Consequently, they do not require the President's signature.

■ **Appropriations legislation.** After passing a budget resolution, the House and Senate develop appropriations bills. The Constitution requires the House (rather than the Senate) to originate "revenue bills," which has long been interpreted as including appropriations bills. Accordingly, the House traditionally debates and passes its appropriations bills prior to the Senate, and when debating appropriations bills on the Senate floor, the Senate adopts the bill number (e.g., H.R. 1234) belonging to the corresponding House bill. As a practical matter, though, the Senate may begin informal development of its own bills in parallel to the House process.

To keep total spending consistent with the budget resolution, the Chairs of the House and Senate Appropriations Committees allocate that resolution's top-line spending numbers among its various subcommittees. Each subcommittee drafts and debates a bill that sets the funding amounts for the programs under its jurisdiction. If approved by the subcommittee, the bill moves on to the full committee. The full committee then debates the bill, and if it approves it, "reports it out" to the full chamber of its respective body of Congress. And as with authorization bills, the appropriations committee typically produces a report to accompany its bill, providing additional direction to the executive branch on how to implement the law once enacted.

Each chamber debates and passes its series of twelve appropriations bills: the THUD bill, plus the eleven others. The House and Senate again resolve their differences via amendment exchange or a conference committee. Once both chambers have approved identical versions of the THUD bill, the legislation goes to the President for signature.

As with any other bill, the President may sign it into law or veto. If the President vetoes the bill, Congress has the ability to override the veto through a 2/3 vote in each chamber.

Other appropriations

In addition to the "regular" annual THUD Appropriations Act, three other types of appropriations actions may affect the funding available for the FAHP: a supplemental appropriations act, an omnibus appropriations act, and a continuing resolution (CR).

■ **Supplemental appropriations act.** A supplemental appropriations act is sometimes necessary during the course of a fiscal year when it becomes apparent that key operations of the Federal government require funding beyond that provided through the regular appropriations process. When it foresees this situation, the Administration will request that Congress enact supplemental legislation. The Emergency Relief program is, by far, the most common program relating to highways for which Congress has enacted supplemental appropriations.

■ **Omnibus appropriations act.** In recent decades Congress has usually been unsuccessful in enacting the entire series of 12 appropriations bills by the beginning of the fiscal year. When unable to pass each individual measure, Congress may at times combine many—or even all—of the bills into a single, consolidated package known as an omnibus. The appropriations process has ended in an omnibus appropriations act in eight of the last ten fiscal years.

An omnibus raises different political dynamics than an individual appropriations bill, as it in effect presents each Member of Congress with a single vote that will either fund or shut down the majority of the Federal government.

■ **Continuing resolution.** In the absence of either a regular appropriations act or omnibus, Congress may instead pass a CR. A CR typically extends the previous fiscal year's legal authorities for a limited period of time (days, weeks, or months). During that period, the CR usually provides pro-rated funding, most commonly based on the prior year's funding levels.

For the Federal highway program, the continuing resolution provides the obligation limitation for the CR period. It also provides liquidating cash, which allows FHWA to liquidate State obligations (pay States) for projects that are underway.

5. Obligation Limitation

The foregoing discussion has described the routine procedures for funding the Federal-Aid Highway Programs (FAHP) that have contract authority: authorizing legislation, distribution of funds, and obligations. Again, because of contract authority, the flow of these program funds is not directly affected by the annual appropriations process. This permits a smooth and stable flow of Federal-aid funds to the States, but this very benefit can be a disadvantage to overall Federal budgeting. A major function of the appropriations process is to assess the current need for, and effect of, Federal dollars on the economy. The appropriations process has been the traditional way to control Federal expenditures annually. However, the highway program, with multiple-year authorizations and multiple-year availability of funds, would appear to be exempt from this annual review. The question arises: what controls can annual Federal budget decisions place on the highway program?

The answer is to place a limit, or ceiling, on the total obligations that can be incurred for the FAHP during a year. A limitation on obligations in a given year does not affect the scheduled apportionment or allocation of Federal-aid highway funds after they are authorized. However, by controlling obligations annually, the program may be made more responsive to budget policy. As discussed in Chapter 4, once an obligation is made, the Federal government must pay the State when bills become due. That “promise” must be kept, and so it is impossible to place direct controls on outlays. But by limiting the obligations, Congress may prevent FHWA from making the promise in the first place—eliminating the need for any subsequent payment.

This chapter details the history, function, and characteristics of an obligation limitation. It also discusses the process through which FHWA applies that limitation across the Federal-aid highway program. For convenience, the chapter uses the terms “obligation limitation” and “obligation ceiling” interchangeably.

History

The highway program has been subject to limitations on obligation since 1966. In the early years, the executive branch limited obligations. The common term for this action was “impoundment.” However, a turnabout came with enactment of the Congressional Budget and Impoundment Control Act of 1974.⁵⁶ This act established a formal process for the executive branch and Congress to follow in setting limits on the use of authorized funds.

Beginning in fiscal year (FY) 1976, Congress became the branch of government that places annual limitations on obligations. Each year the President’s budget request has recommended such a limitation for the FAHP. This recommendation is only a proposal to Congress for enactment. Congress will consider the recommendation, but may or may not actually follow it.

Congress limits FAHP obligations through a legislative act—most frequently in an appropriations act, since limitations are a form of budget control. Surface

transportation authorization acts also typically include obligation limitations, and on occasion other types of legislation, such as reconciliation bills, do as well.

The FAST Act established obligation ceilings for each of FY 2016 through 2020. Each year, the appropriations legislation will confirm or modify these ceilings.

Function and characteristics

The obligation ceiling limits the amount of funding that may be obligated during the specified fiscal year—generally without regard to the year in which the funds in question were apportioned or allocated. However, the FAST Act provided a few specific programs with multi-year obligation limitation, which may be carried over for several years. Some prior authorization acts also provided individual programs with “no-year” limitation, which is available until it is used (i.e., it does not expire).

A few programs within the FAHP are exempt from the obligation limitation, allowing FHWA to obligate funding under these programs without regard to the limitation on obligation. Under the FAST Act, these exempt programs included the Emergency Relief program, certain balances of programs exempt under prior Acts, and a portion (\$639 million per year) of the National Highway Performance Program (NHPP).⁵⁷

It is important to recognize that the distribution and redistribution of the individual State obligation ceilings do *not* constitute a grant or a retraction of apportioned and allocated sums. A State already has received apportionments or allocations as a result of authorizations in highway acts; the obligation limitation only governs *how much* of its unobligated balance of apportionments and allocations the State may obligate during a given fiscal year. Furthermore, if a State retains an unobligated balance of apportioned or allocated funding at the end of a fiscal year, it may carry over those funds for use during the following fiscal year, assuming that they have not lapsed.

Table 5 illustrates the degree to which an obligation limitation constrains the ability to obligate Federal-aid funds within a given fiscal year. As the table shows, the FAHP ended FY 2015 with a total of \$23.3 billion in available contract authority. After subtracting amounts with carry-over obligation limitation from prior years, then adding new FY 2016 funding, the FAHP began FY 2016 with a total of \$58.0 billion in available contract authority. The FY 2016 obligation limitation was \$42.4 billion. Consequently, \$15.6 billion was not available for obligation that year, due to the obligation ceiling.

Table 5. Impact of FY 2016 obligation limit on availability of funding

Note: Table does not reflect FAHP funding exempt from the obligation limitation.

	\$ billions
Unobligated balance (9/30/2015)	23.2
Unobligated balance with carryover limitation (no-year or multi-year) from prior years	- 7.6
Unobligated balance without carryover limitation	15.6
New FY 2016 apportionments and allocations	+ 42.4
Total funding (without carryover limitation) available to obligate in FY 2016	58.0
FY 2016 obligation limitation	- 42.4
Amount not available for obligation in FY 2016	15.6

Distribution

As with prior authorization acts, the FAST Act laid out a multi-step process that directs FHWA how to divide the obligation limitation among programs and the States. Parallel provisions in the annual Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations Act typically restate the process without change.⁵⁸ In the case of conflict, the later-enacted provision (usually in the appropriations act) prevails.

Under the FAST Act (and the FY 2016 THUD Appropriations Act), FHWA distributes the obligation limitation through the process specified below. Appendix I also provides a step-by-step analysis of FHWA's process for distributing the obligation limitation, using FY 2016 as an example. Except as specified below, each portion of the obligation limitation expires at the end of the fiscal year.

■Step 1. Reserve dollar-for-dollar obligation limitation for certain programs.

First, FHWA sets aside limitation for selected programs specified in law: Disadvantaged Business Enterprise (DBE) Supportive Services, On-the-Job Training (OJT) Supportive Services, Highway Use Tax Evasion projects, and the Bureau of Transportation Statistics.⁵⁹ FHWA reserves limitation for each of these programs on a dollar-for-dollar basis—providing each program with an amount of obligation limitation equal to its contract authority. FHWA also reserves a specified amount of obligation limitation to allow the obligation of contract authority for the administrative expenses of both FHWA and the Appalachian Regional Commission (ARC). The FAST Act directed FHWA to set aside dollar-for-dollar limitation for both of these categories of administrative expenses. However, as described in Chapter 4, the annual appropriations act typically includes a specified sub-limitation on administrative expenses (LAE). This LAE may differ from the amount of available contract authority and overrides the direction to provide dollar-for-dollar limitation.

■Step 2. Set aside obligation limitation for use with carryover allocated balances. For a variety of reasons, allocated programs are at times unable to obligate all of their available contract authority within a given fiscal year (e.g., FY 2015). In such a circumstance (assuming the contract authority has not lapsed), they carry over the unobligated balances of contract authority into the next fiscal year (e.g., FY 2016). This makes the carryover balances subject to that next year's obligation limitation.

To enable the obligation of prior-year allocated funds, FHWA sets aside, for each such program, an amount of obligation limitation equal to that program's carryover contract authority balance.

■Step 3. Determine ratio of remaining obligation limitation to contract authority. After making these initial set-asides, FHWA compares the remaining amount of obligation limitation to the total amount of new authorizations for the fiscal year for programs that are subject to the obligation limitation (and that were not already accounted for under the first two steps).⁶⁰ FHWA uses this ratio of total obligation limitation to total authorizations, known as the "limitation ratio," in step four of the distribution process.

■Step 4. Set aside obligation limitation for allocated programs at the ratio. In step one FHWA set aside obligation limitation for use with current-year contract

authority for a few specified allocated programs: the “100 percent” programs. In step two, FHWA sets aside obligation limitation for use with all *prior*-year allocated contract authority. This leaves the question of how to account for *current*-year allocated funding, apart from that associated with “100 percent” programs.

FHWA reserves for each such program an amount of obligation limitation equal to the program’s new authorization for the fiscal year, multiplied by the limitation ratio. At the same time, FHWA “lops off” (removes) from an allocated program the “excess” contract authority, then distributes that lopped-off authority to States by formula; for additional detail, see the description of “Lop-off” below.

The FAST Act also made obligation limitation reserved for research programs through this process available for four years, instead of expiring at the end of a single fiscal year.⁶¹

■ **Step 5. Distribute the remaining “formula limitation” to the States.** Finally, FHWA distributes the balance of the obligation limitation among the States based on each State’s relative share of total Federal-aid highway apportionments (subject to the limitation) for the fiscal year.⁶² Since FHWA distributes this obligation limitation by formula, it is known as “formula limitation.”

FHWA does not provide program-specific obligation limitation for formula programs (e.g., there is no NHPP obligation limitation, or STBG obligation limitation). Rather, FHWA provides each State with a single amount of formula limitation that applies to *all* of the State’s apportioned programs, apart from those that are exempt from the obligation limitation, or that have carried over no-year obligation limitation from prior years. This offers the State the flexibility to determine the best combination of program funds to obligate in each category (NHPP, STBG, etc.) based on its individual needs, as long as its total obligations stay within the overall ceiling.

■ **August redistribution.** For a variety of reasons, a given program may be unable to obligate its share of the obligation limitation by the end of a given fiscal year. In recognition of this, Congress has established a statutory process to allow FHWA to redistribute such obligation limitation to States that can, by the year-end deadline, obligate more than their initial share of the ceiling. This process takes place in August, and consequently is referred to as August redistribution.⁶³ Multi-year obligation limitation and no-year obligation limitation are not subject to August redistribution.

Lop-off

In most fiscal years, the limitation ratio that FHWA calculates above is lower than 100 percent; i.e., the total obligation limitation (net of that set aside under steps one and two of the process) is *less* than total new authorizations of contract authority. In theory, this would leave each allocated program with more contract authority than obligation limitation, and no ability to obligate this excess contract authority. In practice, though, Congress has resolved this situation through a statutory “lop-off” process.⁶⁴ Apart from a few exceptions, all allocated programs are subject to lop-off. The exceptions include the 100 percent programs covered by step one, as well as the Tribal Transportation Program, which since MAP-21 has been statutorily exempt from the lop-off requirement.

Under the lop-off process, FHWA removes from an allocated program any contract authority in excess of that program's obligation limitation for the fiscal year. FHWA then combines the contract authority amounts lopped off from the various allocated programs and distributes the total sum among States by formula. States may use these funds for projects eligible under the Surface Transportation Block Grant Program (STBG). However, FHWA does not distribute additional obligation limitation to accompany lopped-off contract authority. Therefore, a State must draw upon its formula limitation when using lop-off funds.

As an example, in FY 2016, the FAST Act authorized \$335 million in contract authority for the Federal Lands Transportation Program (FLTP), and the limitation ratio for that year was 94.9 percent. Consequently, FHWA set aside \$318 million ($\$335 \text{ million} \times 94.9 \text{ percent}$) in obligation limitation for FLTP and reduced the amount of available FY 2016 FLTP contract authority to \$318 million. FHWA then distributed the \$17 million that it had lopped off from FLTP to States for use on STBG-eligible projects. The States must use their formula obligation limitation to obligate the lop-off funding for use on STBG-eligible projects.

Appendix J lists the programs subject to lop-off under the FAST Act, as well as the amount that FHWA lopped off from each such program in FY 2016.

6. Outlay of Funding

Up to this point, the discussion has focused on how the Federal-aid Highway Program (FAHP) is funded and shaped, how FHWA distributes the funding to the States, how the appropriations process affects the overall program, and the promise by the Federal government to pay the States for their eligible expenses incurred during construction of a project. This chapter discusses the process through which the Federal government keeps that promise: the outlay of cash from the Highway Trust Fund (HTF) to liquidate (pay) a prior obligation of Federal funding.

Conditions precedent

Four requirements must be met before the Federal government pays cash for a Federal-aid highway project. The first is that a State or other eligible recipient must submit to FHWA a voucher associated with a valid obligation of Federal-aid highway funding. This process is described in additional detail below (under “Payments to States”). The second is that the HTF must have enough cash to cover the amount of the voucher. The third and fourth requirements—expenditure authority and available liquidating cash—are described below.

■ **Expenditure authority.** The Trust Fund must have expenditure authority: the general legal authority, subject to an appropriations act, for the HTF to expend cash that it has on hand in order to meet an obligation that had been made pursuant to a surface transportation authorization act. Congress provides expenditure authority in an authorization act. This authority normally covers the period of the authorization act and ends on a date specified in the act; as an example, the FAST Act extended the authority to expend funds through September 30, 2020.

■ **Appropriation of liquidating cash.** In addition to general expenditure authority authorized for the HTF, FHWA must have the legal authority to outlay a specific amount of that cash. This amount-specific authority is called a liquidating cash appropriation. As described in Chapter 4, each year FHWA requests liquidating cash in the President’s Budget request.

Congress appropriates liquidating cash within the annual appropriations act, and then FHWA uses that authority to pay States. Any liquidating cash appropriated by Congress but not paid out by the Trust Fund during the year can be carried over for use in the next fiscal year. Conversely, if Congress finds that it appropriated insufficient liquidating cash in the annual DOT Appropriations Act to pay the Trust Fund’s bills, it may enact additional legislation to provide additional liquidating cash.⁶⁵

Payments to States

Under the FAHP, FHWA does not distribute cash in advance to States. Instead, it notifies each State of the balances of Federal funds available for its use, meaning that the State may request obligations, begin projects, and then later be paid for eligible costs incurred. The project need not be completed, however, before a State begins to receive payments. Depending upon the type of the project, the time elapsing from obligation to outlay (payment) can vary from a few days to several

years; see “outlay rates” below for additional detail.

Payments are normally made to States. However, if a project is initiated on a toll facility under the jurisdiction of a public authority in a State, payments can be made directly to that public authority if requested by the State transportation department.⁶⁶

The normal sequence of events for payment to the States is as follows:

- 1) A contractor does work on the project.
- 2) The contractor sends a bill to the State, which processes the bills for all work done throughout the State. At this point, the State has incurred the cost.
- 3) The State sends FHWA electronic vouchers to review and approve for payment.
- 4) The FHWA certifying officer certifies the State transportation department’s claim for payment.
- 5) FHWA submits these certifications to the Treasury Department.
- 6) The Treasury Department transfers the Federal share of the cost for all projects on the vouchers directly to the State’s bank account by electronic funds transfer.

As figure 6 illustrates, this sequence repeats, often beginning again before the first round is complete. The process is routine, and it is possible that steps three through six may occur on the same day.

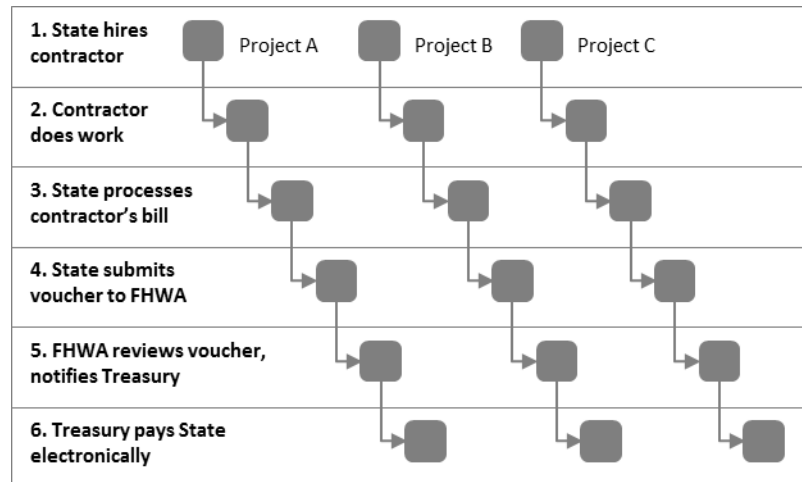


Figure 6. Payments to States

This general framework—obligation of funding, progression (or completion) of work, and only then outlay of cash—has led many to refer to the FAHP as a “reimbursable” program. In many States the program operates in this manner: the State, as the contracting agency pays the contractors’ invoices, submits the necessary vouchers to FHWA, and uses the Federal cash to reimburse itself. However, there is no legal requirement for a State to front the bill payment with State revenues; at its discretion, a State may instead use the Federal cash to pay the contractor’s Federal share of the bill. The timing of the Federal payment to the State is governed by an agreement between the State and the Treasury Department in accordance with the Cash Management Improvement Act of 1990. FHWA’s

payments are generally deposited in the State's account on the same day payments to the contractor are made.

Rate of outlay

The rate of outlay from the HTF varies from year-to-year. As a surface transportation project may take years to complete, outlays from the HTF for projects may similarly extend over a multi-year period. Figure 7 shows the number of years that pass, on average, between the obligation and outlay of Federal-aid highway funding.

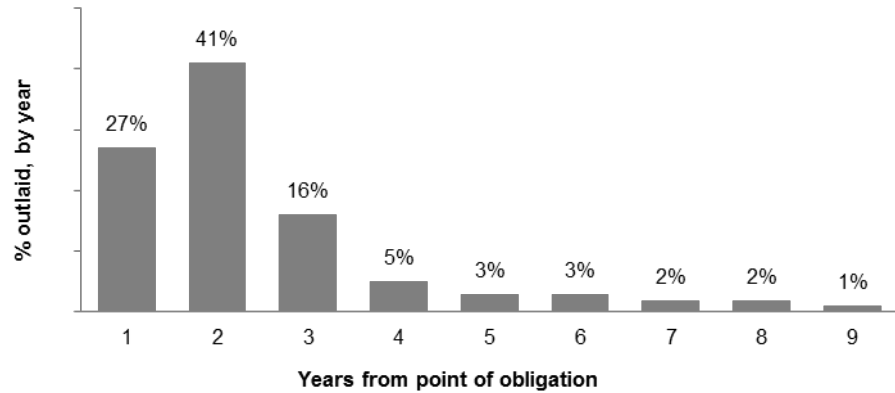


Figure 7. Rate of outlay of Federal-aid highway funding

7. The Highway Trust Fund

The previous chapters have only peripherally mentioned the Highway Trust Fund (HTF). This has been intentional. The HTF's role as the source of liquidating cash for the Federal-Aid Highway Program (FAHP) has a limited impact on the financial procedures under which the highway program operates. However, the use of the Trust Fund provides a direct benefit to the highway program: it allows the program to operate with contract authority.

This chapter describes the history and operations of the HTF, its sources of revenue, and actions that Congress has taken in recent years to ensure that the Fund could pay its bills on a timely basis.

History and legal authorities

Prior to 1956, Congress funded Federal highway programs under the public finance principle of “spend where you must, and get the money where you can.” Budget authority came through the granting of contract authority, as it does now. Congress levied Federal taxes on motor fuels and automobile products, but the receipts from these taxes were not linked to funding for highways. Instead, the Federal government used cash from the General Fund of the Treasury to liquidate previously-incurred obligations for the FAHP. Otherwise, the program operated in terms of authorizations, obligations, appropriations, and reimbursements—much as it does today.

The Federal-Aid Highway Act of 1956 increased authorizations for the Federal-aid Primary and Secondary Systems⁶⁷ and authorized significant funding of the Interstate System. The Highway Revenue Act of that same year established a budgetary mechanism—the HTF—with dedicated revenues to fund the expanded highway program. To support the increased authorizations, the Revenue Act increased some of the existing highway-related taxes and established new ones. It also credited most of the receipts from these taxes to the HTF, which was dedicated to funding Federal-aid highways.

A number of Trust Fund-related legal authorities periodically expire, including the imposition of the taxes that are dedicated to the HTF, the authority to place the receipts from those taxes into the HTF, and the authority to expend HTF revenues on Federal-aid highway projects. Congress exercises its spending power to periodically extend each of these authorities, and has done so repeatedly over the six decades that the Trust Fund has been in operation. The expiration date for the collection of user taxes is normally two years following the expiration of the authorization act.

Table 6 shows the dates on which each of these authorities will expire under the FAST Act.

Table 6. Expiration dates of Highway Trust Fund-related authorities

Legal authority to...	Under the FAST Act, expires on...
Impose HTF-related taxes	Sept. 30, 2022 ⁶⁸
Transfer these receipts to the HTF	Sept. 30, 2022
Expend HTF revenues on Federal-aid highway projects	Sept. 30, 2020

Sources of income

The HTF was created as a user-supported fund: highway users would pay taxes, the tax receipts would flow into the HTF, and HTF balances would be dedicated for use on highway projects (later expanded to surface transportation projects). This overall construct is still in place, but the tax structure has changed since 1956.

The HTF has three long-standing sources of income:

- 1) Federal fuel taxes;
- 2) Other Federal taxes on truck users; and
- 3) Interest on invested balances.

Since the latter years of SAFETEA-LU, these sources have not yielded enough income to fully cover the HTF’s ongoing expenses. To keep the HTF solvent, Congress has on a number of occasions passed legislation to transfer additional amounts into the HTF. These transfers are described later in this chapter.

■ **Federal fuel taxes.** Subsequent to the 1956 establishment of the HTF, a number of laws have increased Federal fuel taxes—most recently in 1993:

The *Federal-aid Highway Act of 1959* included the first post-1956 Federal gas tax increase, increasing the tax from three cents per gallon to four cents per gallon.

The *Surface Transportation Assistance Act (STAA) of 1982 and the Deficit Reduction Act of 1984* made major revisions to the highway taxes, including another increase in Federal motor-fuel taxes. The 1982 STAA also established a special Mass Transit Account in the HTF and directed a portion of the motor-fuel tax to that new account.⁶⁹ The rest of the tax remained dedicated to the original portion of the Trust Fund, referred to as the “Highway Account.”

The *Omnibus Budget Reconciliation Act of 1990 (OBRA 90)* increased the Federal gasoline tax by another five cents per gallon (up to 14.1 cents per gallon), effective December 1, 1990. It also established a “first” for the HTF: half of the revenues derived from the five-cent increase went to the General Fund of the Treasury for deficit reduction. Before that time, virtually *all* revenues from Federal motor fuel (and other highway-related Federal excise taxes) had been credited entirely to the HTF.⁷⁰ The General Fund portion of the tax was imposed on a temporary basis through September 30, 1995.

The *Omnibus Budget Reconciliation Act of 1993 (OBRA 93)* increased the Federal gas tax yet again, this time by 4.3 cents per gallon, effective October 1, 1993 (and with no expiration date). The increase brought the gasoline tax to 18.4 cents per gallon, and the entire amount of the increase was directed to the General Fund of the Treasury for deficit reduction. The law also permanently extended the General Fund fuel tax imposed by OBRA 90 and directed those revenues (except in the case of certain alcohol fuels) to the HTF, effective October 1, 1995.⁷¹

In addition to increasing Federal fuel taxes, Congress has also passed laws to *redirect* certain fuel tax revenues:

The *Taxpayer Relief Act of 1997* redirected the revenues from the 4.3-cents per gallon levied under OBRA 93 from the General Fund to the HTF, effective October 1, 1997.

The *Surface Transportation Extension Act of 2004, Part V (STEA 04-V)* redirected to the Highway Trust Fund the portion of the gasohol tax that had continued to be deposited in the General Fund under the provisions of OBRA 90 and OBRA 93. This redirection was effective for the period October 1, 2003, through September 30, 2004.

The *American Jobs Creation Act of 2004 (AJCA 04)* made the STEA 04-V redirection permanent. It also eliminated gasohol's partial exemption from the gasoline tax, which had been enacted in 1978 as an incentive to alternatives to petroleum fuels. In lieu of the exemption, AJCA 04 authorized the General Fund to pay a credit to eligible filers.

Table 7 lists the rate currently in effect for each Federal fuel tax. Appendix K shows the history of the highway fuel tax rates since the creation of the HTF.

■ **Truck-related Federal taxes.** In addition to the fuel taxes, there are three other Federal excise taxes that target heavy trucks to support the HTF:

- 1) A tax on the sale of certain new heavy-duty trucks;
- 2) A fee assessed annually on heavy vehicles that operate on public highways; and
- 3) A tax on certain heavy truck tires.

Table 7 lists the rate currently in effect for each of these taxes.

Table 7. Current Highway Trust Fund tax rates

Tax type	Tax rate
Federal fuel taxes	
Gasoline and gasohol	18.4 cents per gallon
Diesel	24.4 cents per gallon
Special Fuels:	
General rate	18.4 cents per gallon
Liquefied petroleum gas	18.3 cents per gasoline-equivalent gallon
Liquefied natural gas	24.3 cents per gallon diesel-equivalent gallon
M85 from natural gas	9.25 cents per gallon
Compressed natural gas	18.3 cents per gasoline-equivalent gallon
Other Federal taxes on truck users	
Tires: (maximum rated load capacity)	
0-3,500 pounds	No Tax
Over 3,500 pounds	9.45 cents per each 10 pounds in excess of 3,500
Truck and Trailer Sales	12 percent of retailer's sales price for tractors and trucks over 33,000 pounds gross vehicle weight (GVW) and trailers over 26,000 pounds GVW
Heavy Vehicle Use	Annual tax: Trucks 55,000 pounds and over GVW, \$100 plus \$22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds (maximum tax of \$550)

■ **Proceeds from penalties and interest.** The HTF also benefits from a few other sources of non-tax revenue, such as penalties. Since October 30, 1984, the proceeds from fines and penalties imposed for violation of motor carrier safety requirements have been deposited in the Highway Account.⁷² Similarly, since October 22, 2004, the proceeds of certain penalties imposed by the Internal Revenue Code related to highway-user taxes have been deposited in the Highway Account.⁷³ Effective October 1, 2015, the net proceeds of certain NHTSA motor vehicle safety penalties are also deposited in the Highway Account.⁷⁴

In addition, the HTF collects interest on its invested balances. By law, the Treasury Department must invest in public debt securities any balance in the HTF beyond that which is needed to cover current expenses of programs funded from the HTF.⁷⁵ From October 1, 1998, through March 17, 2010, the HTF was prohibited by law from receiving interest on these investments.⁷⁶ However, prior to that period—and since March 18, 2010—the Treasury Department has invested HTF balances in interest-bearing securities, and has credited interest from those securities to the Trust Fund.

■ **Transfers to maintain solvency.** Beginning in Fiscal Year (FY) 2008, and in each subsequent fiscal year to date, the HTF's outlays have exceeded the revenues it has received from the afore-mentioned sources. To ensure that the Trust Fund could promptly pay its bills, Congress has passed a number of laws that have transferred amounts from other sources into the HTF. The majority of these funds have come from the General Fund of the Treasury, but some originated elsewhere; for example, Congress has in recent years transferred some funding into the HTF from the Leaking Underground Storage Tank Trust Fund.

Table 8 lists the amounts that Congress has transferred in this manner (or in the case of FY 2017 and 2018, scheduled for transfer).

Table 8. Transfers to ensure Highway Trust Fund solvency

Fiscal Year	To Highway Account (\$ billions)	To Mass Transit Account (\$ billions)
2008	\$8.0	\$-
2009	7.0	-
2010	14.7	4.8
2011	-	-
2012	2.4	-
2013 ^{1/}	5.9	-
2014 ^{1/}	18.4	4.0
2015	6.1	2.0
2016	52.0	18.1
2017 ^{2/}	0.1	-
2018 ^{2/}	0.1	-
Total	\$114.7	\$28.9

1/ Amounts shown are net of any required sequester

2/ Scheduled for October 1, 2016, and October 1, 2017, respectively

Collection of taxes

■ **Collection and deposit.** The Federal government does not directly collect from the consumer most of the excise taxes credited to the HTF. Instead, these taxes are typically paid to the Internal Revenue Service by the producer or importer of the taxable product; as exceptions, the tax on trucks and trailers is paid by the retailer, and the heavy vehicle use tax is paid by the heavy vehicle owner. As a result, most of the Federal fuel taxes come from a handful of States (those where major oil companies are headquartered) and most tire taxes are paid from Ohio (the home of the U.S. tire industry). Of course, all of these taxes become part of the price of the product, and are ultimately “paid” by the highway user.

User taxes are deposited in the General Fund of the Treasury and the amounts equivalent to these taxes are then transferred to the HTF. Transfers are required to be made at least monthly on the basis of estimates by the Secretary of the Treasury and later adjusted up or down on the basis of actual tax receipts.⁷⁷ And as described earlier, amounts in the HTF are invested in public debt securities.

■ **Attribution to the States and the question of equity.** Since there is considerable focus on each State’s contributions to the HTF, FHWA estimates the amount of taxes paid by the highway users of each State. The FHWA calculates this estimate on the basis of data reported by State motor-fuel tax agencies.

Highway users in some States pay more in user taxes than those States receive back in Federal-aid highway apportionments and allocations. Such States have at times been referred to as “donor” States—in contrast to “donee” States that pay *less* in user taxes than they receive in Federal-aid highway apportionments and allocations. There has been a longstanding debate on the how to balance the Nation’s need for a strong, connected highway system in every State with the desire for an equitable return on State contributions to the HTF. In response,

Congress has included in authorization acts a variety of provisions to address the balance.

The specific approach has varied among acts, as has the range of States that benefitted. For example, STAA, ISTEA, TEA-21, and SAFETEA-LU each authorized separate equity programs, from which FHWA apportioned funding to States that met statutorily-specified criteria. In contrast, neither MAP-21 nor the FAST Act authorized a specific equity program. Instead, they each required FHWA to increase the total apportionment of each State for which the apportionment did not meet a certain mathematical threshold, and to proportionally *decrease* the total apportionments of all other States by an equal and offsetting amount. The threshold for this “equity adjustment” is whether a State’s total apportionment equals at least 95 cents for each dollar of contributions to the Highway Account of the HTF that FHWA attributes to the State’s residents (based on the most recently-available data).⁷⁸

Trust Fund operations

Table 9 describes the operations of the Highway Account in FY 2015. As the table shows, the Highway Account began that year with a balance of \$11.4 billion. That year the Treasury Department made a statutorily-required transfer of \$6 billion from the General Fund to the Highway Account. However, even after accounting for that transfer, the account’s outlays exceeded its income by \$1.1 billion for the year. Furthermore, that year FHWA transferred a net total of \$1.2 billion from the Highway Account to the Mass Transit Account. After all of this, the Highway Account ended the year with a balance of \$9 billion.

Table 9. Operation of the Highway Account, FY 2015

	\$ billions
Balance, beginning of FY 2015	11.376
Gross tax receipts	36.738
Transfers to other funds	- 0.997
Interest and penalties	0.026
Transfer from General Fund ⁷⁹	6.068
Net income	41.831
Outlays	- 42.952
Income less outlays	- 1.118
Transfers to Mass Transit Account (MTA)	- 1.246
Transfers from MTA	0.029
Total impact of MTA transfers	- 1.217
Balance, end of FY 2015	9.040

■ **Transfers to other funds.** Taxes on gasoline and special fuels used in motorboats are dedicated to the Sport Fish Restoration and Boating Trust Fund⁸⁰ with \$1 million of that amount annually transferred to the Land and Water Conservation Fund. Tax receipts from gasoline used in small engines, such as lawnmowers and chain saws, are also dedicated to the Sport Fish Restoration and Boating Trust Fund. Such uses cannot be determined from the fuel tax returns filed by the taxpayers, which are typically oil companies. Therefore, the receipts are initially deposited into the HTF along with the highway fuel taxes. From there, the Treasury Department estimates the portion of the taxes deposited in the HTF

derived from such uses and transfers those tax receipts to the appropriate Trust Fund.⁸¹

Taxes on aviation fuels are intended for the Airport and Airway Trust Fund (AATF). However, because aviation kerosene (jet fuel) can be used as a substitute or additive to highway diesel fuel and is taxed at a lower rate than highway diesel, most aviation kerosene is initially taxed as highway diesel fuel with the receipts deposited into the HTF. When aviation users claim their tax refunds, the Treasury Department charges the refunds to the HTF and transfers the remainder of the tax to the AATF.⁸²

As Table 9 indicates, transfers to other funds totaled to \$997 million in FY 2015.

Significance of the balance

The balance of the HTF has long been a point of controversy. Because of the nature of a “reimbursable” program like the FAHP, there may be cash in the fund that is not needed for immediate use. It is important to understand that this is not a “surplus,” or excess cash. Rather, those amounts will be needed over time to pay States as they submit vouchers related to prior obligations.

A comparison of the HTF operation to a personal financial situation may help clarify this point. Imagine a person who has a checking account balance of \$500, has outstanding monthly bills of \$1,000, and will receive another \$500 in a paycheck at the end of the month. The current \$500 balance cannot be considered excess, given the bills that will soon come due. However, the account also is not in a deficit situation, given the projected income.

The HTF operates in a similar manner. At the close of FY 2015, the Highway Account held a cash balance of \$9 billion (see Table 10). At the same time, though, there were \$64 billion in unpaid *commitments* against the HTF: authorizations that FHWA had previously apportioned or allocated to States (and other eligible recipients), but for which the Treasury Department had yet to outlay cash. Therefore, the \$9 billion balance was not excess cash.

The true reflection of the status of the HTF is the difference between commitments and income, considering in each case the full period of time over which the Trust Fund is authorized to operate. This difference is the amount that Congress considers when proposing any new commitments (additional authorizations). However, it is also important to remember that any such calculation is based on revenue projections, which can change from time to time.

Byrd Test

During initial consideration of the HTF in the 1950s, some in Congress raised concerns about the ability of the new fund to sustain itself: specifically, that the proceeds of the taxes dedicated to the HTF might prove insufficient to make reimbursements when claims were made. In response to those concerns, Congress included in the 1956 law a provision that required the Treasury Department periodically to compare the HTF’s outstanding *commitments* against the HTF’s expected *resources* (current and future), and to reduce highway apportionments if necessary to keep the two in balance. This comparison is referred to as the Byrd Amendment, or the Byrd Test.⁸³ The Mass Transit Account is subject to a similar, but separately calculated, test, known as the Rostenkowski Rule.⁸⁴ Congress has changed the exact requirements of the Byrd Test several times over the life of the HTF, most recently in SAFETEA-LU.⁸⁵

The current version of the Byrd Test hinges on whether the HTF’s “unfunded” authorizations exceed the total revenues that the Treasury Department projects the HTF will earn over the following four year period. The Treasury Department calculates this quarterly, with unfunded authorizations defined as:

- the amount of contract authority (whether obligated or unobligated) authorized from the Highway Account, but for which the Trust Fund has yet to outlay cash; minus
- the current balance of the Highway Account.

If unfunded authorizations exceed projected revenues, FHWA must reduce the current year’s highway apportionments by an equal and offsetting amount.⁸⁶

As an example, Table 10 shows the amounts that the Treasury Department considered when carrying out the Byrd Test for the first quarter of FY 2016. At that time, Treasury determined that the Trust Fund had “passed” the Byrd Test, with HTF resources exceeding HTF commitments. However, if that calculation had shown commitments exceeding resources, FHWA would have proportionately reduced all FY 2016 highway apportionments.

Table 10. Calculation of initial FY 2016 Byrd Test.

	\$ billions
Outstanding Highway Account authorizations not paid as of September 30, 2015	64
Less: Highway Account cash balance as of September 30, 2015	- 9
Unfunded authorizations	55
Anticipated Highway Account revenues during FYs 2017-2020	138

Over the history of the Trust Fund, the FHWA has twice reduced apportionments under the Byrd Test: Interstate System construction apportionments for FY 1961 and all Highway Account apportionments for FY 2004. However, the current version of the Byrd Test is a less stringent method of measuring sustainability, and has reduced the likelihood that a reduction will be triggered.⁸⁷ No Byrd Test reductions are anticipated for the foreseeable future.

Appendices

Appendix A. Glossary

Allocation. An administrative distribution of funds for programs that are not distributed to States by a statutory formula.

Apportionment. The distribution of funds to States as prescribed by a statutory formula.

Appropriated Budget Authority (ABA). A form of *Budget Authority* that requires both an authorization act *and* an appropriations act before any funds can be obligated.

Appropriations Act. Action of a legislative body that makes funds available for expenditure with specific limitations as to amount, purpose, and duration. In most cases, it permits money previously authorized to be obligated and payments made, but for the highway program operating under contract authority, the appropriations act specifies amounts of funds that Congress will make available for the fiscal year to liquidate obligations.

Authorization Act. Basic substantive legislation that establishes or continues Federal programs or agencies and establishes an upper limit on the amount of funds for the program(s). The current authorization act for surface transportation programs is the Fixing America's Surface Transportation (FAST) Act.

Budget Authority. Empowerment by Congress that allows Federal agencies to incur obligations that will result in the outlay of funds. Congress generally provides this empowerment to an agency in the form of an appropriation. However, for most of the highway programs, it is in the form of *contract authority*.

Budget Resolution. A concurrent resolution passed by Congress presenting the Congressional Budget for each of the succeeding 5 years. A concurrent resolution does not require the signature of the President.

Contract Authority (CA). A form of *Budget Authority* that permits obligations to be made in advance of appropriations. Most of the programs under the *Federal-Aid Highway Program* operate under Contract Authority.

Expenditures. See *Outlays*.

Federal-aid Highway Program (FAHP). An umbrella term, not defined in law, which in general refers to most of the Federal programs providing highway funds to the States. When used in a budgetary context, FAHP specifically refers to highway programs financed by contract authority out of the Highway Account of the Highway Trust Fund (HTF), plus any HTF supplemental appropriations for the Emergency Relief Program. Such authorizations are contained in Titles I (Federal-aid Highways) and VI (Innovation) of Division A of the FAST Act, as well as in acts providing supplemental appropriations.

Federal Highway Administration (FHWA). The Federal agency within the U.S. Department of Transportation that administers the Federal-aid Highway Program.

Fiscal Year (FY). The accounting period for the budget. The Federal fiscal year is from October 1 until September 30. The fiscal year is designated by the calendar year in which it ends. For example, FY 2016 runs from October 1, 2015, through September 30, 2016.

Highway Trust Fund (HTF). An account established by law to hold Federal highway-user taxes that are dedicated for highway and transit related purposes. The HTF has two accounts: the Highway Account and the Mass Transit Account.

Obligation Authority (OA). The total amount of funds that the Federal government may obligate in a year. For the Federal-aid Highway Program this is comprised of the *obligation limitation* amount plus amounts for programs exempt from the limitation.

Obligation Ceiling. Identical to *obligation limitation*.

Obligation Limitation. A restriction, or “ceiling” on the amount of Federal assistance that may be promised (obligated) during a specified time period. This is a statutory budgetary control that does not affect the apportionment or allocation of funds. Rather, it controls the rate at which the funds may be used.

Obligation. The Federal government’s legal commitment (promise) to pay or reimburse the States or other entities for the Federal share of a project’s eligible costs.

Outlays. Actual cash (or electronic transfer) payments made to the States or other entities. Outlays are provided as work progresses for the Federal share for approved highway program activities.

Penalty. An action taken by Federal agencies when the grant recipient does not comply with provisions of the law. For the highway program the imposition of penalties, which are defined in law, may prevent a State from using or receiving its full apportionment or may force a transfer from one program to another.

President’s Budget. A document submitted annually (due by the first Monday in February) by the President to Congress. It sets forth the Administration’s recommendations for the Federal budget for the upcoming fiscal year.

Rescission. Legislation enacted by Congress that cancels the availability of previously-enacted budget authority before that authority would otherwise expire.

Sequestration. The cancellation of budgetary resources provided by discretionary appropriations or direct spending law. The concept is similar to a rescission, but this term is commonly used when discussing broad budget controls.

Sliding Scale. The normal Federal share of 80% for non-Interstate projects and 90% for Interstate projects is adjusted upward to no more than 95%, based on a sliding scale, for each State with a large amount of Federal lands (over 5% of the total area of the State).

State. As defined in chapter 1 of Title 23, U.S.C., any of the 50 States, plus the District of Columbia and the Commonwealth of Puerto Rico. However, the definition of “State” varies in some specific circumstances. For example, highway safety programs under 23 U.S.C. define “State” to also include the Territories (the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and the Secretary of the Interior (for Indian Reservations). Also, Puerto Rico is not treated as a State for purpose of apportioning Federal-aid highway funds.

Suballocation. For purposes of the FAST Act and prior transportation authorizations, the statutory reservation of a portion of a State’s apportioned highway funding for use in one or more specific areas within the State.

For additional definitions, see *A Glossary of Terms Used in the Federal Budget Process*, Government Accountability Office, September 2005. Also see Section 101 of Title 23, United States Code.

Appendix B. FAST Act Authorizations

Note: Amounts shown are authorized out of the Highway Account of the Highway Trust Fund, unless otherwise noted.

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Total
Federal-aid Highway Program (Apportioned)	39,727,500,000	40,547,805,000	41,424,020,075	42,358,903,696	43,373,294,311	207,431,523,082
<i>Estimated Split Among Programs:</i>						
National Highway Performance Program	22,332,260,060	22,827,910,827	23,261,963,879	23,741,388,895	24,235,621,114	116,399,144,775
Surface Transportation Block Grant Program	11,162,564,768	11,424,412,150	11,667,786,566	11,876,329,314	12,136,990,131	58,268,082,929
Highway Safety Improvement Program (HSIP)	2,225,594,512	2,275,061,630	2,317,759,770	2,359,554,152	2,407,423,445	11,585,393,509
Railway-Highway Crossings Program	225,000,000	230,000,000	235,000,000	240,000,000	245,000,000	1,175,000,000
Safety-related Programs (allocated set-aside from HSIP)	3,500,000	3,500,000	3,500,000	3,500,000	3,500,000	17,500,000
Congestion Mitigation and Air Quality Improvement Program	2,309,059,935	2,360,308,101	2,405,187,322	2,449,216,207	2,498,960,969	12,022,732,534
Metropolitan Planning Program	329,270,722	335,938,378	342,996,446	350,360,775	358,516,037	1,717,082,358
National Highway Freight Program ^{1/}	1,140,250,003	1,090,673,914	1,189,826,092	1,338,554,353	1,487,282,615	6,246,586,977
FHWA Admin. Expenses	453,000,000	459,795,000	466,691,925	473,692,304	480,797,689	2,333,976,918
General Administration/Appalachian Regional Commission	429,000,000	435,795,000	442,691,925	449,692,304	456,797,689	2,213,976,918
On-the-Job Training	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	50,000,000
Disadvantaged Business Enterprises	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	50,000,000
Highway Use Tax Evasion Projects	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	20,000,000
Federal Lands & Tribal Transportation	1,050,000,000	1,075,000,000	1,100,000,000	1,125,000,000	1,150,000,000	5,500,000,000
Tribal Transportation ^{2/}	465,000,000	475,000,000	485,000,000	495,000,000	505,000,000	2,425,000,000
Federal Lands Transportation	335,000,000	345,000,000	355,000,000	365,000,000	375,000,000	1,775,000,000
Federal Lands Access ^{2/}	250,000,000	255,000,000	260,000,000	265,000,000	270,000,000	1,300,000,000
Other Programs	1,677,000,000	1,715,000,000	1,775,000,000	1,840,000,000	1,890,000,000	8,897,000,000
TIFIA	275,000,000	275,000,000	285,000,000	300,000,000	300,000,000	1,435,000,000
Territorial and Puerto Rico Highway	200,000,000	200,000,000	200,000,000	200,000,000	200,000,000	1,000,000,000
<i>Puerto Rico Highway [non-add]</i>	<i>158,000,000</i>	<i>158,000,000</i>	<i>158,000,000</i>	<i>158,000,000</i>	<i>158,000,000</i>	<i>790,000,000</i>
<i>Territorial Highway [non-add]</i>	<i>42,000,000</i>	<i>42,000,000</i>	<i>42,000,000</i>	<i>42,000,000</i>	<i>42,000,000</i>	<i>210,000,000</i>
Nationally Significant Freight and Highway Projects	800,000,000	850,000,000	900,000,000	950,000,000	1,000,000,000	4,500,000,000

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Total
Construction of Ferry Boats 3/	80,000,000	80,000,000	80,000,000	80,000,000	80,000,000	400,000,000
Emergency Relief	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	500,000,000
Nationally Significant Federal Lands and Tribal Projects (General Fund)	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	500,000,000
Appalachian Regional Development Program (General Fund)	110,000,000	110,000,000	110,000,000	110,000,000	110,000,000	550,000,000
Regional Infrastructure Accelerator Demonstration Program (General Fund)	12,000,000	0	0	0	0	12,000,000
Transportation Research	414,500,000	417,500,000	417,500,000	420,000,000	420,000,000	2,089,500,000
Highway Research and Development	125,000,000	125,000,000	125,000,000	125,000,000	125,000,000	625,000,000
Technology and Innovation Deployment	67,000,000	67,500,000	67,500,000	67,500,000	67,500,000	337,000,000
Training and Education	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	120,000,000
Intelligent Transportation Systems	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	500,000,000
University Transportation Centers	72,500,000	75,000,000	75,000,000	77,500,000	77,500,000	377,500,000
Bureau of Transportation Statistics	26,000,000	26,000,000	26,000,000	26,000,000	26,000,000	130,000,000
TOTAL CONTRACT AUTHORITY (Highway Account of the Highway Trust Fund)	43,100,000,000	44,005,100,000	44,973,212,000	46,007,596,000	47,104,092,000	225,190,000,000
TOTAL GENERAL FUND (Subject to Appropriation)	222,000,000	210,000,000	210,000,000	210,000,000	210,000,000	1,062,000,000
GRAND TOTAL AUTHORIZATIONS	43,322,000,000	44,215,100,000	45,183,212,000	46,217,596,000	47,314,092,000	226,252,000,000
CONTRACT AUTHORITY EXEMPT FROM OBLIGATION LIMITATION						
Emergency Relief	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	500,000,000
National Highway Performance Program	639,000,000	639,000,000	639,000,000	639,000,000	639,000,000	3,195,000,000
CONTRACT AUTHORITY SUBJECT TO OBLIGATION LIMITATION	42,361,000,000	43,266,100,000	44,234,212,000	45,268,596,000	46,365,092,000	221,495,000,000
OBLIGATION LIMITATION	42,361,000,000	43,266,100,000	44,234,212,000	45,268,596,000	46,365,092,000	221,495,000,000

1/ Represents net amount available after a portion is applied to the Metropolitan Planning Program per the freight formula under section 1104(b)(6) of the FAST Act. Gross authorization for FY2016, FY2017, FY2018, FY2019, and FY2020 is \$1.15 billion, \$1.1 billion, \$1.2 billion, \$1.35 billion, and \$1.5 billion, respectively.

2/ Apportioned programs, but treated as allocated for the distribution of obligation limitation.

3/ Contains a formula, but classified as an allocated program.

Appendix C – Apportionment and Programmatic Distribution

The FAST Act authorizes a single amount for each year for all the apportioned highway programs combined. That amount is apportioned among the States, and then each State’s apportionment is divided among the individual apportioned programs.

Total funding for Federal-aid highway formula programs

The FAST Act authorizes a total combined amount (\$39.7 billion in FY 2016, \$40.5 billion in FY 2017, \$41.4 billion in FY 2018, \$42.4 billion in FY 2019, and \$43.4 billion in FY 2020) in contract authority to fund six formula programs (including certain set-asides within the programs described below):

- National Highway Performance Program (NHPP);
- Surface Transportation Block Grant Program (STBG);
- Highway Safety Improvement Program (HSIP);
- Congestion Mitigation and Air Quality Improvement Program (CMAQ);
- Metropolitan Planning; and
- The new National Highway Freight Program (NHFP).

Determination of each State’s apportionment

Reservation of supplemental STBG and NHPP funds

Before making apportionments to States, the FAST Act requires FHWA to reserve from the total amount authorized for the apportioned programs: (1) for each of FY 2019 and 2020, an amount to supplement the base apportionments for the NHPP (“supplemental NHPP”); and (2) for each of FY 2016-2020, an amount to supplement the base apportionments for the STBG (“supplemental STBG”) [23 U.S.C 104(h)(1) and (2)]. The remainder, net of these amounts, is referred to as the “base apportionment.” [23 U.S.C 104(i)]

Calculation of a State’s initial apportionment (in three components)

For each of these three amounts (supplemental NHPP, supplemental STBG, and base apportionment) FHWA determines a State’s initial apportionment, calculating for the State a share of the amount equal to the State’s share of FY 2015 apportionments. [23 U.S.C. 104(c)]

Adjustment based on Trust fund contributions

FHWA then adjusts each of the three amounts, if necessary, to ensure that the sum of the three amounts received by each State is at least 95% of the dollar amount of its contributions to the Highway Account of the Highway Trust Fund in the most recent year for which data are available. Any upward adjustment based on this comparison is offset by proportional decreases to the amounts of other States. [23 U.S.C 104(c)]

Division of a State’s apportionment among programs

After determining the three amounts for a State (supplemental NHPP, supplemental STBG, and base apportionment), FHWA divides the amounts among the State’s individual formula programs in the following manner:

Step	Program	Calculation of amount													
1	NHFP [23 U.S.C. 104(b)(5)]	Funded in an amount equal to the national amount for the program: ...multiplied by the following ratio:	<table border="1"> <thead> <tr> <th>FY</th> <th>\$ billions</th> </tr> </thead> <tbody> <tr> <td>2016</td> <td>1.15</td> </tr> <tr> <td>2017</td> <td>1.10</td> </tr> <tr> <td>2018</td> <td>1.20</td> </tr> <tr> <td>2019</td> <td>1.35</td> </tr> <tr> <td>2020</td> <td>1.50</td> </tr> </tbody> </table> <div style="text-align: center;"> <hr/> State's base apportionment for FY <hr/> Nat'l total base apportionment for FY </div>	FY	\$ billions	2016	1.15	2017	1.10	2018	1.20	2019	1.35	2020	1.50
FY	\$ billions														
2016	1.15														
2017	1.10														
2018	1.20														
2019	1.35														
2020	1.50														
2A	CMAQ [23 U.S.C. 104(b)(4)]	Funded in an amount equal to the State's base apportionment (net of step #1), multiplied by the following ratio:	<div style="text-align: center;"> <hr/> State's FY09 CMAQ \$ <hr/> State's total FY09 apportionments </div>												
2B	Metro Planning [23 U.S.C. 104(b)(5)(D) & (6)]	Funded in an amount equal to— <ul style="list-style-type: none"> the State's base apportionment (net of step #1); plus the State's NHFP funding (under step #1), multiplied by the following ratio: 	<div style="text-align: center;"> <hr/> State's FY09 Metro Planning \$ <hr/> State's total FY09 apportionments </div>												
3	NHPP [23 U.S.C. 104(b)(1)] STBG [23 U.S.C. 104(b)(2)] HSIP [23 U.S.C. 104(b)(3)]	The remainder of the State's base apportionment (net of amounts under steps #1 through #2B) is divided on the following proportions:	63.7% to NHPP 29.3% to STBG 7.0% to HSIP												
		...and then the NHPP and STBG amounts are increased by the "supplemental NHPP and STBG" amounts calculated above.													
4A	Railway-Highway Crossings set-aside [23 U.S.C. 130; § 126 of Division L of Pub. L. 114-113]	Funded via a set-aside from the States' initial HSIP amounts prior to apportionment— <ul style="list-style-type: none"> based on apportionment formula under 23 U.S.C. 130; and such that the national total for the program is as follows: 	<table border="1"> <thead> <tr> <th>FY</th> <th>\$ millions</th> </tr> </thead> <tbody> <tr> <td>2016</td> <td>350 1/</td> </tr> <tr> <td>2017</td> <td>230</td> </tr> <tr> <td>2018</td> <td>235</td> </tr> <tr> <td>2019</td> <td>240</td> </tr> <tr> <td>2020</td> <td>245</td> </tr> </tbody> </table>	FY	\$ millions	2016	350 1/	2017	230	2018	235	2019	240	2020	245
FY	\$ millions														
2016	350 1/														
2017	230														
2018	235														
2019	240														
2020	245														
4B	Safety-related activities set-aside 2/ [§ 1519(a) of Pub. L. 112-141, as amended by the FAST Act]	Funded via set-aside from the States' initial HSIP amounts prior to apportionment— <ul style="list-style-type: none"> determined proportionally based on the initial HSIP amounts; and such that the national total is \$3.5 million for each fiscal year. 													

1/ The FAST Act set aside \$225 million for FY 2016; the FY 2016 Appropriations Act increased this set-aside to \$350 million.

2/ Set-aside amount is not provided to States as apportionments, but instead funds an allocated program for safety-related activities and clearinghouses. Therefore, FHWA does not include it in the tables in its apportionment notice.

Appendix D. Penalties Applicable to the Federal-aid Highway Program

TYPE/STATUTE	REQUIREMENT (as of the effective date of the FAST Act)	PENALTY FOR NONCOMPLIANCE (as of the effective date of the FAST Act)
<u>STATE TRAFFIC SAFETY LAWS</u>		
National Minimum Drinking Age 23 U.S.C. 158	Each State must have laws that prohibit the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age.	Withholding of 8 percent of the State's apportionments for the National Highway Performance Program (NHPP) and Surface Transportation Block Grant Program (STBG). Funds withheld lapse immediately.
Drug Offenders 23 U.S.C. 159	Each State must certify that it either: 1) has a law that requires the revocation or suspension of drivers' licenses for at least 6 months (or delay in the issuance or reissuance of a license) for those convicted of any violation of the Controlled Substances Act or any drug offense or 2) has a statement by the Governor opposing enactment or enforcement of such a law and a resolution by the State legislature expressing opposition to such law.	Withholding of 8 percent of the State's apportionments for the NHPP and STBG. Funds withheld lapse immediately.
Zero Tolerance Blood Alcohol Concentration for Minors 23 U.S.C. 161	Each State must enact and enforce a law that considers any individual under 21 years who operates a motor vehicle while having a blood alcohol concentration (BAC) of 0.02 grams of alcohol per 100 milliliters of blood or above to be driving while intoxicated or driving under the influence of alcohol.	Withholding of 8 percent of the State's apportionments for the NHPP and STBG. Funds withheld lapse immediately.
Open Container Requirements 23 U.S.C. 154	<p>Each State must enact or have and enforce a law prohibiting the possession of open alcoholic beverage containers or the consumption of any alcoholic beverage in the passenger area of a motor vehicle.</p> <p>For motor vehicles designed to transport many passengers, this requirement is considered satisfied if a State has a law prohibiting the possession of any open alcoholic beverage container by the driver (but not by a passenger): (1) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or (2) in the living quarters of a house coach or house trailer.</p>	Reservation of an amount equivalent to 2.5 percent of the State's NHPP and STBG apportionments and associated obligation authority. Reserved amounts will be transferred to the State's Section 402 apportionment for use for alcohol-impaired driving countermeasures, for enforcement of impaired or intoxicated driving laws, or reserved for activities eligible under the Highway Safety Improvement Program (HSIP), with the amount for each purpose to be determined by the State. The amounts transferred to the State's Section 402 program or reserved for HSIP-eligible uses may be derived from any combination of the NHPP and STBG apportionments at the State's option.
Use of Safety Belts 23 U.S.C. 153(h)	Each State must have a law that makes it unlawful to operate a passenger vehicle if any front seat occupant (other than a child secured in a child restraint system) is not properly wearing a seat belt. An alternate compliance criterion is provided for New Hampshire (§354, P.L. 107-87, Dec. 18, 2001).	Transfer of 2 percent of the State's apportionments for the NHPP, STBG, and Congestion Mitigation and Air Quality Improvement (CMAQ) Program to the section 402 safety program.
Repeat Offenders 23 U.S.C. 164	<p>Each State must enact and enforce a law that provides that any individual convicted of a second or subsequent offense for driving under the influence or while intoxicated shall:</p> <p>(a) receive a suspension of all driving privileges for at least 1 year or a restriction on driving privileges that limits the individual to operating only motor vehicles with an ignition interlock device installed for at least 1 year, unless a special exception applies, or a restriction on driving privileges that</p>	Reservation of an amount equivalent to 2.5 percent of the State's NHPP and STBG apportionments and associated obligation authority. Reserved amounts will be transferred to the State's Section 402 apportionment for use for alcohol-impaired driving countermeasures, for enforcement of impaired or intoxicated driving laws, or reserved for activities eligible under the HSIP, with the

TYPE/STATUTE	REQUIREMENT (as of the effective date of the FAST Act)	PENALTY FOR NONCOMPLIANCE (as of the effective date of the FAST Act)
	<p>limits the individual to operating motor vehicles only if participating in, and complying with, a 24-7 sobriety program for at least 1 year or any combination thereof;</p> <p>(b) receive an assessment of the individual's degree of alcohol abuse and treatment as appropriate; and</p> <p>(c) receive at least an assignment of 30 days of community service or 5 days imprisonment (unless the State certifies that the general practice is that such an individual will be incarcerated) for a second offense and at least an assignment of 60 days of community service or 10 days imprisonment for a third or subsequent offense (unless the State certifies that the general practice is that such an individual will receive 10 days of incarceration).</p> <p>(Note: The FAST Act's changes to this requirement are effective as of October 1, 2016. The requirement remains as in effect under MAP-21 for FY 2016.)</p>	<p>amount for each purpose to be determined by the State. The amounts transferred to the State's section 402 program or reserved for HSIP-eligible uses may be derived from any combination of the NHPP and STBG apportionments at the State's option.</p>
<p>Operation of Motor Vehicle by Intoxicated Persons</p> <p>23 U.S.C. 163</p>	<p>Each State must enact and enforce a law that provides that any person with a BAC of 0.08 grams of alcohol per 100 milliliters of blood or greater while operating a motor vehicle to be driving while intoxicated.</p>	<p>Withholding of an amount equivalent to 6 percent of the State's NHPP and STBG apportionments.</p> <p>If a State enacts and is enforcing the prescribed law within 4 years from the date that funds were withheld, the State's apportionments will be increased by an amount equal to the amount withheld. Otherwise, the withheld funds will lapse.</p>
<u>TRUCKS</u>		
<p>Vehicle Weight Limitations—Interstate System</p> <p>23 U.S.C. 127(a)</p>	<p>Each State must permit a minimum and maximum of 20,000 pound single axle, 34,000 pound tandem axle, and 80,000 pound gross weight of combination (5-axles or more) vehicles to operate on the Interstate System. Maximum weight cannot exceed that allowable under bridge formula. Grandfather rights create State- specific exceptions to all limits.</p>	<p>Withholding of 50 percent of State's NHPP apportionment. If withheld funds are not restored during their availability period, they will lapse.</p>
<p>Enforcement of Vehicle Size and Weight Laws</p> <p>23 U.S.C. 141(a) and (b)</p>	<p>Each State must certify that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System in accordance with 23 U.S.C. 127.</p>	<p>Withholding of 7 percent of the State's apportionments for NHPP, STBG, HSIP, CMAQ, National Highway Freight Program (NHFP), and Metropolitan Planning. Withheld apportionments are restored if enforcement is shown to be acceptable within 1 year; otherwise, the withheld funds are apportioned to all other eligible States.</p>
<p>Registration—Proof of Heavy Vehicle Use Tax Payment</p> <p>23 U.S.C. 141(c)</p>	<p>Each State must require proof of payment of the Federal heavy vehicle use tax prior to registering a heavy vehicle subject to the use tax.</p>	<p>Withholding of up to 8 percent of the State's apportionments for the NHPP. The withheld funds are apportioned to other eligible States.</p>
<p>Commercial Driver's License</p> <p>49 U.S.C. 31314</p>	<p>Each State must be in compliance with minimum Federal standards for licensing, reporting, and penalties related to the licensing of drivers of commercial vehicles.</p>	<p>Withholding of up to 4 percent of the State's apportionments for the NHPP and STBG for the first noncompliance and up to 8 percent thereafter. Funds withheld lapse immediately.</p>

TYPE/STATUTE	REQUIREMENT	PENALTY FOR NONCOMPLIANCE
	(as of the effective date of the FAST Act)	(as of the effective date of the FAST Act)

MAINTENANCE

Maintenance	Each State must properly maintain or cause to be maintained any project constructed under the provisions of the Federal-aid Highway Program.	After notifying the State of lack of proper maintenance, and a period of 90 days in which to remedy the issue, the Secretary shall withhold project approvals for all types of projects in the State highway district, municipality, county, and other subdivisions of the State in which the project is located, or the entire State, as the Secretary deems appropriate.
23 U.S.C. 116		

PLANNING, ENVIRONMENT, AND RIGHT-OF-WAY

Control of Outdoor Advertising	Each State must provide for effective control of outdoor advertising signs along the Interstate System, on the Primary System as it existed on June 1, 1991, and on any highway not on such system but on the National Highway System (NHS). Effective control means that a State must not allow outdoor advertising signs along certain routes unless the signs are from a permissible category.	Withholding of 10 percent of the State's apportionments for NHPP, STBG, HSIP, CMAQ, and Metropolitan Planning. The funds withheld are apportioned to the other eligible States. The Secretary may suspend application of this penalty if deemed to be in the public interest.
23 U.S.C. 131		
Control of Junkyards	Each State must provide for effective control of the establishment, use, and maintenance of junkyards adjacent to the NHS.	Withholding of 7 percent of the State's apportionments for NHPP, STBG, HSIP, CMAQ, and Metropolitan Planning. The withheld funds are apportioned to other eligible States. The Secretary may suspend application of this penalty if deemed to be in the public interest.
23 U.S.C. 136		
Clean Air Act Compliance	Each State is subject to State Implementation Plan (SIP) related sanctions. Each State must submit and implement all provisions of a complete, adequate SIP that provides for attainment of air quality standards in accordance with intermediate and final deadlines specified in the Clean Air Act. Penalty applies for failure to submit a SIP, or other related provisions, Environmental Protection Agency (EPA) disapproval of a SIP, and for failure to implement the SIP.	Cessation of certain highway project approvals within the non-attainment area 2 years after the SIP deficiencies are not corrected. Some projects are exempt from highway sanctions (i.e., seven congressionally authorized activities that discourage single occupancy vehicles (SOV); safety projects whose principal purpose is to improve safety by significantly reducing or avoiding accidents; and projects which EPA finds will improve air quality and not encourage SOV).
42 U.S.C. 7509		
Transportation Conformity	No transportation plan, program, or project may be approved, accepted, or funded unless it has been found to conform to an applicable SIP by the metropolitan planning organization and the DOT. The Clean Air Act requires USDOT to make a conformity finding on the metropolitan transportation plan and TIP and a project level conformity finding on FHWA/FTA projects within a nonattainment or maintenance area, based on technical analysis using transportation, emissions, and air quality models.	Lack of a conformity determination (a conformity lapse) on an area's transportation plan or transportation improvement program (TIP) will prevent the expenditure of FHWA and FTA funds on many activities, with the exception of certain exempt categories. The consequences of a conformity lapse would apply to the entire nonattainment or maintenance area.
42 U.S.C. 7506(c)		
Metropolitan Planning	Each metropolitan planning organization (MPO) in a transportation management area must be certified at least every 4 years by the Secretary of Transportation to be carrying out the required planning process in accordance with applicable provisions of Federal law.	The Secretary may withhold up to 20 percent of the State's apportionments attributable to the metropolitan planning area of the MPO for projects funded under Title 23 and Chapter 53 of Title 49, U.S.C. Funds are restored when the Secretary certifies the MPO.
23 U.S.C. 134(k)(5)		

TYPE/STATUTE	REQUIREMENT (as of the effective date of the FAST Act)	PENALTY FOR NONCOMPLIANCE (as of the effective date of the FAST Act)
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PERFORMANCE AND ACCOUNTABILITY

Interstate System Pavement Minimum Condition 23 U.S.C. 119(f)(1)	Interstate pavement condition, excluding bridges on the Interstate system, in each State must meet or exceed the minimum level of condition established by the Secretary by regulation.	If a State reports that Interstate pavement conditions (not including on Interstate bridges) falls below the minimum, the State must, at a minimum, devote the following resources to improve Interstate pavement conditions during the following fiscal year (and each year thereafter if the condition does not exceed the minimum): (1) NHPP funds in an amount not less than the State's FY 2009 Interstate Maintenance (IM) apportionment, to increase by 2% per year for each year after FY 2013; and (2) funds transferred from STBG (other than suballocated amounts) to NHPP in an amount equal to 10% of the State's FY 2009 IM apportionment.
NHS Bridge Minimum Condition 23 U.S.C. 119(f)(2)	Not more than 10 percent of the NHS bridge deck area in each State may be on structurally deficient bridges.	Set-aside from the State's NHPP funds of an amount equal to 50 percent of the State's Highway Bridge Program apportionment in FY 2009; set-aside amount to be used only for eligible projects on NHS bridges.
NHPP Target Achievement 23 U.S.C. 119(e)(7)	Each State must achieve or make significant progress toward achieving its performance targets for the performance measures established by DOT for the NHS.	If a State fails to achieve or make significant progress toward these targets, it must describe in its next performance report to DOT the actions it will undertake to achieve its targets.
Rural Road Safety 23 U.S.C. 148(g)(1)	Each State must maintain or improve the fatality rate on rural roads.	If the traffic fatality rate on rural roads in a State increases over the most recent two-year period for which data are available, in the next fiscal year the State must obligate for projects on high risk rural roads an amount equal to at least 200 percent of the amount of funds that the State received for high risk rural roads in FY 2009.
Older Driver Safety 23 U.S.C. 148(g)(2)	Each State must maintain or improve the number of fatalities and serious injuries per capita for drivers and pedestrians over the age of 65	If the number of traffic fatalities and serious injuries per capita for drivers and pedestrians over 65 in a State increases during the most recent two-year period for which data are available, the State must include, in the subsequent Strategic Highway Safety Plan of the State, strategies to address the increases in those rates, taking into account the recommendations in the FHWA's Highway Design Handbook for Older Drivers and Pedestrians.
HSIP Target Achievement 23 U.S.C. 148(i)	Each State must achieve or make significant progress toward achieving its performance targets for the performance measures established by DOT for the HSIP.	If a State fails to achieve or make significant progress toward these targets it must: 1) annually submit an implementation plan as described under the HSIP; and 2) use a portion of its obligation authority only for HSIP projects. The dedicated amount must be equal to the State's apportionment for the HSIP program in the prior year. The requirements continue until the Secretary determines that the State is meeting its targets or making significant progress.

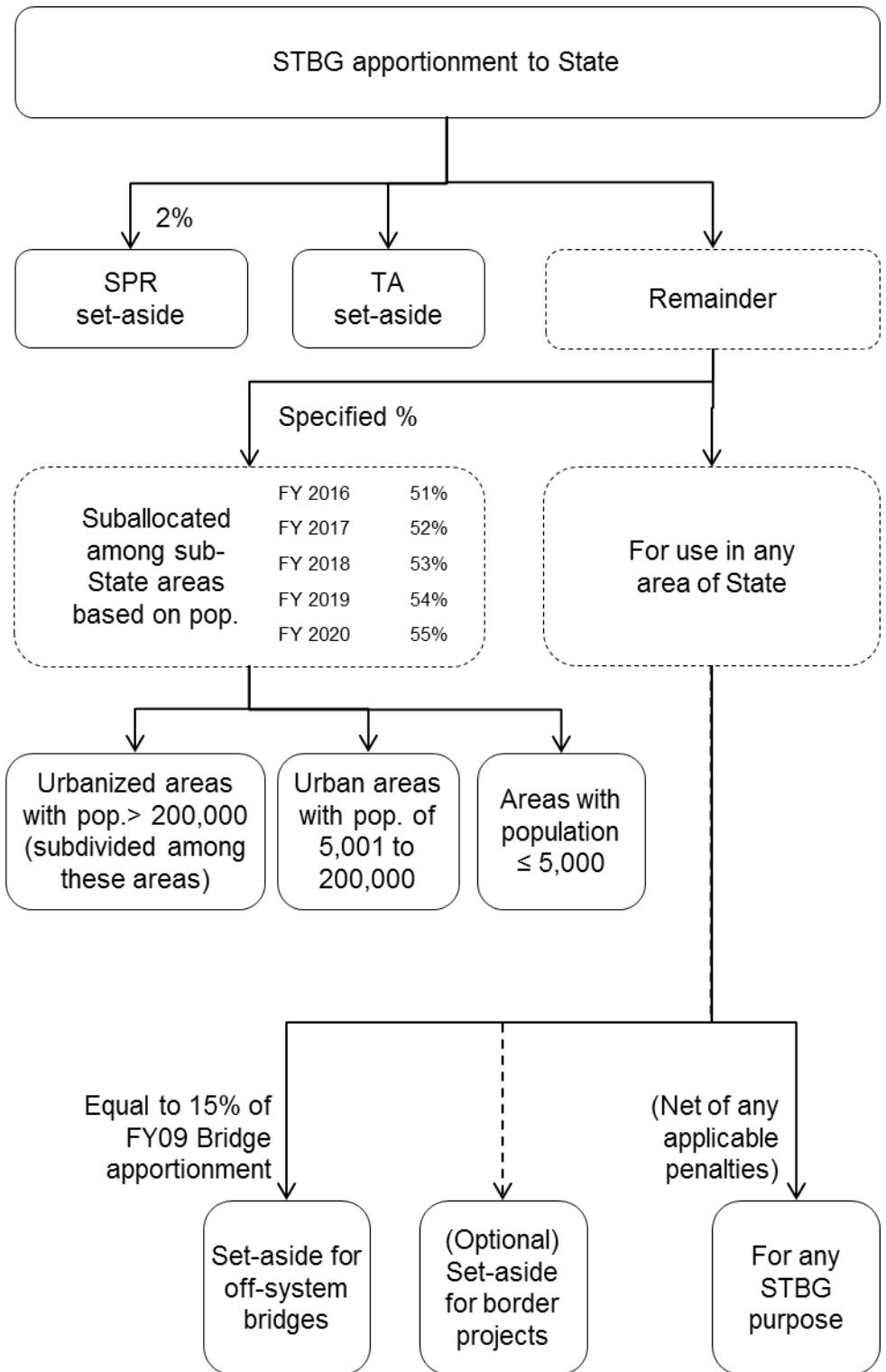
Appendix E. Sub-State Distribution of Surface Transportation Block Grant Program Funding

Step 1:
Set aside funds for State Planning and Research (SPR) and Transportation Alternatives (TA) [23 U.S.C. 133(h) and 505(a)]

Step 2:
Suballocate specified % based on population; remainder may be used anywhere in State [23 U.S.C. 133(d)(1) and (6)]

Step 3a:
Suballocate funds into three categories
Further subdivide the pop. > 200,000 category among individual areas [23 U.S.C. 133(d)(1)(A) and (d)(4)]

Step 3b:
Set aside funds for off-system bridges (required) and border State infrastructure (optional); remainder may be used for any STBG purpose [23 U.S.C. 133(f) and § 1437 of the FAST Act]

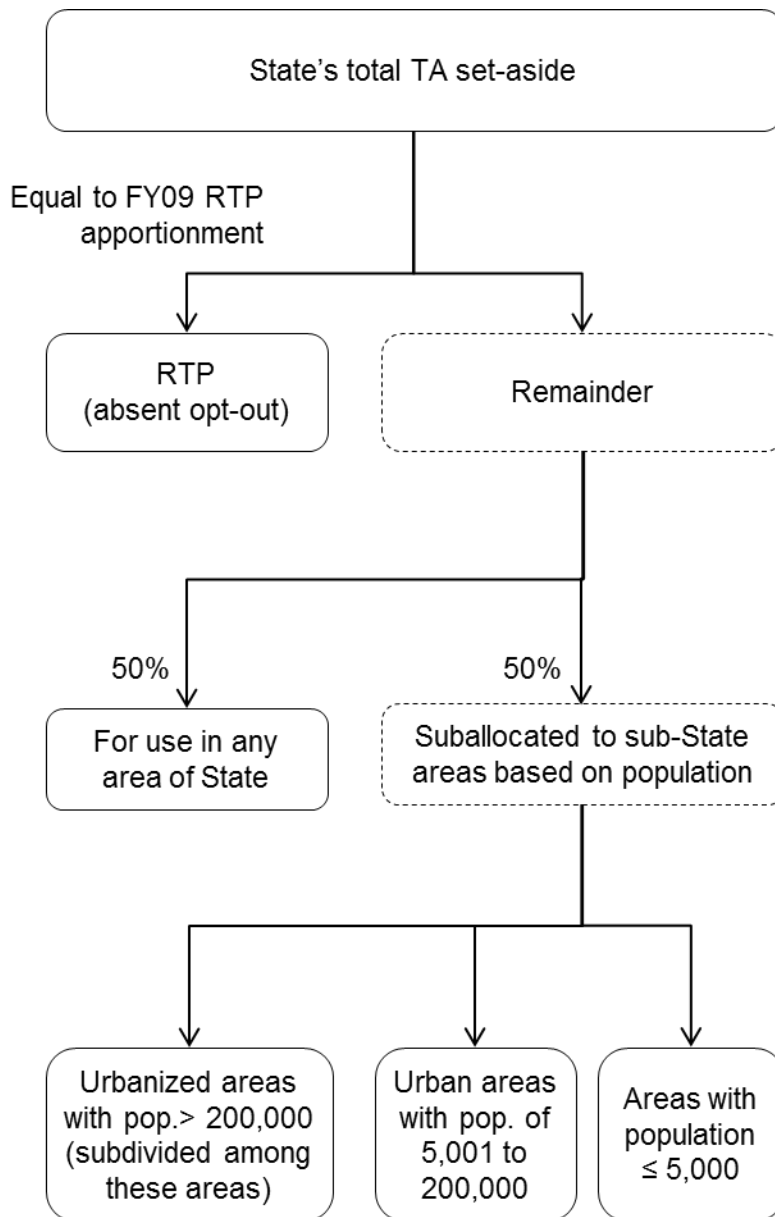


Appendix F. Sub-State Distribution of Transportation Alternatives Funding

Step 1:
 Unless Governor opts out, set aside funds for Recreational Trails Program (RTP) [23 U.S.C. 133(h)(5)]

Step 2:
 Suballocate 50% of remainder based on population; other 50% may be used anywhere in State [23 U.S.C. 133(h)(2)]

Step 3:
 Suballocate funds into three categories
 Further subdivide the pop. > 200,000 category among individual areas [23 U.S.C. 133(h)(2)]



Appendix G. Transferability of Apportioned Funding

This appendix describes options to transfer funds from one apportioned highway program to another. Other transfer options exist, including transfers of funds to from one State to another, from a State to Federal agency, or among certain projects designated in statute. Guidance on the full range of transfer options, as well as procedures for executing transfers, is issued by the Federal Highway Administration's Office of the Chief Financial Officer.

Program	Transferability Provisions	Statute
National Highway Performance Program (NHPP)	A State may transfer up to 50% of its NHPP apportionment to its STBG, NHFP, HSIP, CMAQ, and/or TA apportionments.	23 U.S.C. 126(a)
Surface Transportation Block Grant Program (STBG)	A State may transfer up to 50% of its STBG apportionment to its NHPP, NHFP, HSIP, and/or CMAQ apportionments. The amount transferred may not come from the portion of STBG that is required to be suballocated to sub-State areas.	23 U.S.C. 126(a) and 126(b)(1)
Highway Safety Improvement Program (HSIP)	A State may transfer up to 50% of its HSIP apportionment to its NHPP, NHFP, STBG, CMAQ, and/or TA apportionments.	23 U.S.C. 126(a)
Congestion Mitigation and Air Quality Improvement Program (CMAQ)	A State may transfer up to 50% of its CMAQ apportionment to its NHPP, NHFP, STBG, HSIP, and/or TA apportionments.	23 U.S.C. 126(a)
Metropolitan Planning	A State may not transfer its Metropolitan Planning apportionment to other highway program apportionments.	23 U.S.C. 126(b)(1)
National Highway Freight Program (NHFP)	A State may transfer up to 50% of its NHFP apportionment to its NHPP, STBG, HSIP, CMAQ, and/or TA apportionments.	23 U.S.C. 126(a)
Transportation Alternatives (TA)	A State may transfer up to 50% of its TA funds to its NHPP, NHFP, STBG, HSIP, and/or CMAQ apportionments. The amount transferred must come from the portion of TA funds that is available for use anywhere in the State (no transfers of suballocated TA funds or TA funds reserved for the Recreational Trails Program).	23 U.S.C. 126(a) and 126(b)(2)
Rail-Highway Crossings Program	A State may transfer up to 100% of its Rail-Highway Crossings apportionment to its HSIP apportionment if the State demonstrates to the satisfaction of the Secretary that it has met all its needs for installation of protective devices at railway-highway crossings.	23 U.S.C. 130(e)(2)

Appendix H. Federal Share

The maximum share of project costs that may be funded with Federal-aid highway funds (the “Federal share”) varies based upon the Federal-aid program from which the project receives funding. In some cases this share is also adjusted based on related statutory provisions. The FAST Act made relatively few changes to Federal share; those changes are shown in boldface below.

“Standard” Federal share

23 U.S.C. 120 provides that except as otherwise provided, the Federal share payable shall be—

- 90% for a project on the Interstate System (including a project to add high occupancy vehicle lanes or auxiliary lanes but excluding a project to add other lanes); and
- 80% for any other project.

There are a number of exceptions and adjustments to the “standard” Federal share. See below (and program-specific fact sheets) for information about, and the applicability of, these exceptions and adjustments.

Adjustments to Federal share

Sliding scale

23 U.S.C. 120(a) and (b) authorize an upward adjustment (the “sliding scale”) to the Federal share for a State containing Federal and nontaxable Indian lands. A sliding scale State is eligible for an increased Federal share based upon the location of the project—90-95% for an applicable Interstate project and 80-95% for any other project. The amount of the upward adjustment is based on the percentage of Federal and nontaxable Indian lands in the State.

Other adjustments to Federal share

- *Designated types of projects.* Certain specified types of projects, mostly targeting safety improvements, are eligible to receive a Federal share of 100%. A State may apply this increased Federal share on no more than 10% of its combined apportionment under 23 U.S.C. 104. [23 U.S.C. 120(c)(1)]
- *Innovative project delivery methods.* A project incorporating innovations described in 23 U.S.C. 120(c)(3) is eligible for an increased Federal share of up to 100% if funded by the National Highway Performance Program (NHPP), Surface Transportation Block Grant (STBG) Program, or Metropolitan Planning program. **The FAST Act added specific mention of innovative engineering or design approaches and project delivery methods as activities eligible for this increased Federal share.** [FAST Act §1408(a)]
- *Workforce development.* Subject to project approval by the Secretary, a State may obligate NHPP, STBG, Highway Safety Improvement Program (HSIP), and Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for surface transportation workforce development, training, and education at a Federal share of 100%. Activities under the Local Technical Assistance Program limited to a Federal share of 50%. [23 U.S.C. 504(e)]
- *Appalachian Development Highway System (ADHS) projects.* For fiscal years 2012 through **2050 (previously through 2021)**, a State that uses apportioned funding to construct a highway or access road on the ADHS is eligible for a Federal share of **up to 100%** on that project. [FAST Act § 1435]
- *Projects within Indian reservations, national parks and monuments.* When an eligible project uses funds from a program apportioned under 23 U.S.C. 104 and that project is located within the boundaries of an Indian reservation, national park, or national monument, the Federal share may be 100%. [23 U.S.C. 120(f)]
- *Toll projects.* A toll project under 23 U.S.C. 129 is eligible for a maximum Federal share of 80% (regardless of whether the project would have qualified for a higher Federal share if advanced as a non-toll facility). [23 U.S.C. 129(a)(5)]
- **[Repealed] Projects to improve freight movement.** Section 1116 of MAP-21 authorized an increased Federal share for certain projects that demonstrably improved freight movement. However, the FAST Act repealed this provision. [FAST Act § 1116(c)]

Increased non-Federal share

23 U.S.C. 120(h) authorizes a State to contribute an amount in excess of the non-Federal share of any project under title 23 U.S.C., thus decreasing the Federal share for the project.

Transfers of funding between FHWA and FTA

Federal-aid highway funds made available for a transit project or transportation planning may be transferred to the Federal Transit Administration (FTA) and administered in accordance with FTA’s requirements (under chapter 53 of title 49). Similarly, Federal transit funding made available for a highway project or transportation planning may be transferred to FHWA and administered in accordance with title 23 requirements. In either case, the transferred funds remain subject to the Federal share that applied to the category from which the funding was derived. [23 U.S.C. 104(f)]

Program	Federal share (%) ¹	Plus eligible for...					
		Sliding scale ²	100% for designated types of projects ³	Up to 100% for innovative delivery methods ⁴	100% for workforce development ⁵	Up to 100% for ADHS projects ⁶	100% within Indian reservations, national parks, and monuments ⁷
National Highway Performance Program	80 / 90 ^{8,9}	✓	✓	✓	✓	✓	✓
Surface Transportation Block Grant Program	80 / 90⁸	✓	✓	✓	✓	✓	✓
Highway Safety Improvement Program	90 ^{8,10}	✓	✓		✓		✓
Railway-Highway Crossings	90 ¹¹						
Congestion Mitigation & Air Quality Improvement Program	80 / 90 ⁸	✓	✓		✓		✓
National Highway Freight Program	80 / 90 ⁸	✓	✓			✓	✓
Metropolitan Planning	80 ⁸	✓		✓			
State Planning and Research	80 ¹²						
Transportation Alternatives	80 / 90 ⁸	✓	✓				✓
Recreational Trails Program	80 ¹³	✓					
Tribal Transportation Program	100 ¹⁴						
Federal Lands Transportation Program	100 ¹⁴						
Federal Lands Access Program	80 / 90 ^{8,15}	✓	✓				
Nationally Significant Federal Lands and Tribal Projects Program	Up to 90 ¹⁶						
Puerto Rico Highway Program	80 / 90 ⁸	✓	✓				
Territorial Highway Program (or any project in the specified territories)	100 ¹⁷						
Emergency Relief	80-100 ¹⁸	✓					
Emergency Relief for Federally Owned Roads	100¹⁹						
Construction of Ferry Boats & Ferry Terminal Facilities	80 ²⁰						
Highway Research & Development Program	80 ²¹						
Technology & Innovation Deployment Program	80 ²¹						
Training & Education	80 ^{21, 22}						
Intelligent Transportation Systems Program	80 ²¹						
Advanced Transportation & Congestion Management Technologies Deployment	Up to 50²³						
Surface Transportation System Funding Alternatives	Up to 50²⁴						
Nationally Significant Freight and Highway Projects	60/80/100²⁵						

¹ The Federal share specified in this column may be subject (as specified) to one or more of the provisions referenced in the subsequent columns. In some circumstances the Federal share may also be modified by the provisions described above related to projects requiring Federal toll authority.

² 23 U.S.C. 120(a)-(b).

³ 23 U.S.C. 120(c)(1).

⁴ **23 U.S.C. 120(c)(3), as amended by FAST Act § 1408(a).**

⁵ 23 U.S.C. 504(e).

⁶ **MAP-21 § 1528(c), as amended by FAST Act § 1435. Increased Federal share applies through FY 2050.**

⁷ 23 U.S.C. 120(f).

⁸ "Standard Federal share" of 90% for a project on the Interstate System (including a project to add high occupancy vehicle lanes or auxiliary lanes but excluding a project to add other lanes) and 80% for any other project or activity. [23 U.S.C. 120(a)-(b)]

⁹ With respect to the second fiscal year beginning after the date of establishment of the process for State development of an asset management plan as required by 23 U.S.C. 119(e)(8), the NHPP Federal share for a State that has not developed and implemented an asset management plan will be reduced to 65% until it develops and implements its plan. [23 U.S.C. 119(e)(5)]

¹⁰ 23 U.S.C. 148(j).

¹¹ 23 U.S.C. 130(f)(3).

¹² The Secretary may increase this share (up to 100%) if he or she determines that this would best serve the interests of the Federal-aid highway program. [23 U.S.C. 505(d)]

¹³ 23 U.S.C. 206(f) (which cites to 23 U.S.C. 120(b), with some specified exceptions).

¹⁴ 23 U.S.C. 201(b)(7)(A).

¹⁵ 23 U.S.C. 201(b)(7)(B).

¹⁶ **FAST Act §1123(g). Federal funds other than those made available under titles 23 or 49 U.S.C. may be used for the non-Federal share.**

¹⁷ 23 U.S.C. 120(g).

¹⁸ Emergency Relief (ER) funds are typically subject to the standard Federal share: 80%, with 90% on Interstates, in both cases subject to the sliding scale. However, this share may be adjusted as follows:

- Up to 100% for eligible emergency repairs within 180 days of the disaster or catastrophic failure. The Secretary may extend this time period, taking into consideration any delay in the ability of the State to access damaged facilities to evaluate damage and the cost of repair. [23 U.S.C. 120(e)(1) & (3)]
- Up to 90% for eligible permanent repairs to restore facilities to pre-disaster condition if the State's ER-eligible expenses for the FY exceed the State's combined NHPP/STP/HSIP/CMAQ/NHFP/Metropolitan Planning apportionment for that FY. [23 U.S.C. 120(e)(4)]

¹⁹ **23 U.S.C. 120(e)(2) as amended by FAST Act § 1408(b). Prior to the amendment, eligible Federal Lands Access Transportation Facilities qualified for a Federal share of 100%. Per § 421 of the Department of Transportation Appropriations Act, 2016 (P.L. 114-113, the FAST Act amendment applies to projects to repair or reconstruct facilities damaged as a result of a qualifying natural disaster or catastrophic failure that occurs after October 1, 2015.**

²⁰ 23 U.S.C. 147(b).

²¹ Except as expressly provided by the FAST Act or otherwise determined by the Secretary, projects and activities funded under Title VI (Innovation) of the FAST Act are subject to a Federal share of 80%. [FAST Act § 6002(c)]. The Federal share of activities carried out under a cooperative research and development agreement entered into under chapter 5 of 23 U.S.C. shall not exceed 80%, except that the Secretary may approve a greater Federal share if there is substantial public interest or benefit. [23 U.S.C. 502(c)(3)]

²² This share is reduced to 50% for activities carried out by a local technical assistance center and increased to 100% for activities carried out by a tribal technical assistance center. [23 U.S.C. 504(b)(3)]

²³ **FAST Act §6004, 23 U.S.C. 503(c)(4)(J).**

²⁴ **FAST Act §6020(g).**

²⁵ **The standard Federal share is up to 60%, but Federal assistance from other sources may increase this to 80%. Federal funds from sources other than 23 U.S.C. or 49 U.S.C. may be used to pay the non-Federal share of the cost of a project carried out under this program by a Federal land management agency. [FAST Act §1105, 23 U.S.C. 117(j)]**

Appendix I. Distribution of the FY 2016 obligation limitation

This appendix describes the manner in which FHWA distributed the FY 2016 obligation limitation, pursuant to section 120 of the Department of Transportation Appropriations Act, 2016 (Title I of Division L Public Law 114-113). All section references shown are to Division L of Public Law 114-113.

	New FY 2016 Contract Authority	New FY 2016 Obligation Limitation																								
FY 2016 Total	43,100,000,000	42,361,000,000																								
Beginning:	Sec. 120(b)																									
Exclude Exempt Programs	<table border="1" style="width: 100%;"> <tr> <td>Exempt Programs:</td> <td></td> <td></td> </tr> <tr> <td> Emergency Relief</td> <td style="text-align: right;">100,000,000</td> <td style="text-align: right;">-----</td> </tr> <tr> <td> National Highway Performance Program (portion)</td> <td style="text-align: right;">639,000,000</td> <td style="text-align: right;">-----</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black;">739,000,000</td> <td style="text-align: right; border-top: 1px solid black;">-----</td> </tr> <tr> <td>Total Subject to Limitation</td> <td style="text-align: right;">42,361,000,000</td> <td style="text-align: right;">42,361,000,000</td> </tr> </table>		Exempt Programs:			Emergency Relief	100,000,000	-----	National Highway Performance Program (portion)	639,000,000	-----		739,000,000	-----	Total Subject to Limitation	42,361,000,000	42,361,000,000									
Exempt Programs:																										
Emergency Relief	100,000,000	-----																								
National Highway Performance Program (portion)	639,000,000	-----																								
	739,000,000	-----																								
Total Subject to Limitation	42,361,000,000	42,361,000,000																								
STEP 1:	Sec. 120(a)(1)																									
Set aside certain programs at 100%	<table border="1" style="width: 100%;"> <tr> <td colspan="3"><u>100% Accounts:</u></td> </tr> <tr> <td>FHWA Administration (net of set-asides)</td> <td style="text-align: right;">429,000,000</td> <td style="text-align: right;">425,752,000</td> </tr> <tr> <td>ARC Administrative Expenses (set-aside)</td> <td style="text-align: right;">-----</td> <td style="text-align: right;">3,248,000</td> </tr> <tr> <td>DBE Supportive Services (set-aside)</td> <td style="text-align: right;">10,000,000</td> <td style="text-align: right;">10,000,000</td> </tr> <tr> <td>OJT Supportive Services (set-aside)</td> <td style="text-align: right;">10,000,000</td> <td style="text-align: right;">10,000,000</td> </tr> <tr> <td>Highway Use Tax Evasion Projects (set-aside)</td> <td style="text-align: right;">4,000,000</td> <td style="text-align: right;">4,000,000</td> </tr> <tr> <td>Bureau of Transportation Statistics</td> <td style="text-align: right;">26,000,000</td> <td style="text-align: right;">26,000,000</td> </tr> <tr> <td>Subtotal, 100% Programs</td> <td style="text-align: right; border-top: 1px solid black;">479,000,000</td> <td style="text-align: right; border-top: 1px solid black;">479,000,000</td> </tr> </table>		<u>100% Accounts:</u>			FHWA Administration (net of set-asides)	429,000,000	425,752,000	ARC Administrative Expenses (set-aside)	-----	3,248,000	DBE Supportive Services (set-aside)	10,000,000	10,000,000	OJT Supportive Services (set-aside)	10,000,000	10,000,000	Highway Use Tax Evasion Projects (set-aside)	4,000,000	4,000,000	Bureau of Transportation Statistics	26,000,000	26,000,000	Subtotal, 100% Programs	479,000,000	479,000,000
<u>100% Accounts:</u>																										
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Subtotal, 100% Programs	479,000,000	479,000,000																								
STEP 2:	Sec. 120(a)(2)																									
Set aside limitation for carryover	<table border="1" style="width: 100%;"> <tr> <td>Carryover, Allocated Programs</td> <td style="text-align: right;">-----</td> <td style="text-align: right;">2,132,225,485</td> </tr> </table>		Carryover, Allocated Programs	-----	2,132,225,485																					
Carryover, Allocated Programs	-----	2,132,225,485																								
STEP 3:	Sec. 120(a)(3)																									
Determine ratio of obligation limitation to contract authority	<table border="1" style="width: 100%;"> <tr> <td>Subtotal to Determine Ratio (Balances remaining after set-asides in Steps 1 & 2)</td> <td style="text-align: right;">41,882,000,000</td> <td style="text-align: right;">39,749,774,515</td> </tr> <tr> <td>Ratio</td> <td style="text-align: right;">94.9090%</td> <td style="text-align: right; border: 1px solid black;">94.9%</td> </tr> </table>		Subtotal to Determine Ratio (Balances remaining after set-asides in Steps 1 & 2)	41,882,000,000	39,749,774,515	Ratio	94.9090%	94.9%																		
Subtotal to Determine Ratio (Balances remaining after set-asides in Steps 1 & 2)	41,882,000,000	39,749,774,515																								
Ratio	94.9090%	94.9%																								
STEP 4:	Sec. 120(a)(4)																									
Set aside limitation for allocated pgms. based on ratio	<table border="1" style="width: 100%;"> <tr> <td>Tribal Transportation Program (no lop-off)</td> <td style="text-align: right;">465,000,000</td> <td style="text-align: right;">441,285,000</td> </tr> <tr> <td>Other Allocated Programs (net of penalties)</td> <td style="text-align: right;">2,322,316,160</td> <td style="text-align: right;">2,203,878,036</td> </tr> <tr> <td>Puerto Rico Penalties (immediate lapse)</td> <td style="text-align: right;">9,683,840</td> <td style="text-align: right;">-----</td> </tr> </table>		Tribal Transportation Program (no lop-off)	465,000,000	441,285,000	Other Allocated Programs (net of penalties)	2,322,316,160	2,203,878,036	Puerto Rico Penalties (immediate lapse)	9,683,840	-----															
Tribal Transportation Program (no lop-off)	465,000,000	441,285,000																								
Other Allocated Programs (net of penalties)	2,322,316,160	2,203,878,036																								
Puerto Rico Penalties (immediate lapse)	9,683,840	-----																								
STEP 5:	Sec. 120(a)(5)																									
Distribute remaining limitation to the States	<table border="1" style="width: 100%;"> <tr> <td>Distributed to the States (before transfer penalties and high risk rural road set-aside)</td> <td style="text-align: right;">39,085,000,000</td> <td style="text-align: right; border: 1px solid black;">37,104,611,479 94.9331%</td> </tr> </table>		Distributed to the States (before transfer penalties and high risk rural road set-aside)	39,085,000,000	37,104,611,479 94.9331%																					
Distributed to the States (before transfer penalties and high risk rural road set-aside)	39,085,000,000	37,104,611,479 94.9331%																								

Appendix J. Lop-off from allocated programs

FY 2016 ALLOCATED PROGRAMS					
Application of Sec. 120(e) of P.L. 114-113 - "Lop-off" Provision					
	<u>FY 2016</u>	<u>Less;</u>	<u>Net</u>	<u>94.9%</u>	<u>5.1%</u>
	<u>Authorization</u>	<u>Penalties</u>	<u>Authorization</u>	<u>After "Lop Off"</u>	<u>Reduction</u>
Federal Lands Transportation Program	335,000,000		335,000,000	317,915,000	17,085,000
Federal Lands Access Program	250,000,000		250,000,000	237,250,000	12,750,000
Transportation Infrastructure Finance and Innovation Program	275,000,000		275,000,000	260,975,000	14,025,000
Puerto Rico Highway Program	158,000,000	9,683,840 ^{1/}	148,316,160	140,752,036	7,564,124
Territorial Highway Program	42,000,000		42,000,000	39,858,000	2,142,000
Construction of Ferry Boats and Ferry Terminal Facilities	80,000,000		80,000,000	75,920,000	4,080,000
Nationally Significant Freight and Highway Projects	800,000,000		800,000,000	759,200,000	40,800,000
Safety-related Programs (HSIP set-aside) ^{2/}	3,500,000		3,500,000	3,321,500	178,500
Highway Research and Development Program ^{3/}	125,000,000		125,000,000	118,625,000	6,375,000
Technology and Innovation Deployment Program ^{3/}	67,000,000		67,000,000	63,583,000	3,417,000
Training and Education ^{3/}	24,000,000		24,000,000	22,776,000	1,224,000
Intelligent Transportation Systems ^{3/}	100,000,000		100,000,000	94,900,000	5,100,000
University Transportation Centers ^{3/}	72,500,000		72,500,000	68,802,500	3,697,500
TOTAL	<u>2,332,000,000</u>	<u>9,683,840</u>	<u>2,322,316,160</u>	<u>2,203,878,036</u>	<u>118,438,124</u>

1/ \$9,683,840 is withheld from Puerto Rico Highway Program pursuant to section 158 of 23 U.S.C., related to minimum drinking age. Funds so withheld immediately lapse.

2/ Set-aside from the Highway Safety Improvement Program for Operation Lifesaver, work zone safety grants, guard rail safety training, work zone safety clearinghouse, and public road safety clearinghouse.

3/ This program receives obligation limitation that is available for four fiscal years.

Appendix K. Historical Federal Fuel Tax Rates

The table below lists Federal excise tax rates on highway motor fuel from 1956-present. Except as specified, tax rates are shown in cents/gallon.

Tax Rate		Effective Date	Distribution Of Tax					Source of Change
			Highway Trust Fund		Leaking Underground Storage Tank Trust Fund	General Fund For:		
			Highway Account	Mass Transit Account		Deficit Reduction	Not Specified	
GASOLINE								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
9	1/	04/01/1983	8	1	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
9	1/	08/01/1984	8	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
9.1		01/01/1987	8	1	0.1	-	-	Superfund Amendments and Reauthorization Act of 1986 P.L. 99-499
14.1		12/01/1990	10	1.5	0.1	2.5	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
18.4		10/01/1993	10	1.5	0.1	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
18.4		10/01/1995	12	2	0.1	4.3	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
18.3		01/01/1996	12	2	-	4.3	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
18.4		10/01/1997	15.45	2.85	0.1	-	-	Taxpayer Relief Act of 1997 P.L. 105-34
18.4	2/	10/01/1997	15.44	2.86	0.1	-	-	Transportation Equity Act for the 21 st Century P.L. 105-178
DIESEL FUEL								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
9	1/	04/01/1983	8	1	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
15	1/	08/01/1984	14	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
15.1		01/01/1987	14	1	0.1	-	-	Superfund Amendments and Reauthorization Act of 1986 P.L. 99-499
20.1		12/01/1990	16	1.5	0.1	2.5	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
24.4		10/01/1993	16	1.5	0.1	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
24.4		10/01/1995	18	2	0.1	4.3	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
24.3		01/01/1996	18	2	-	4.3	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
24.4		10/01/1997	21.45	2.85	0.1	-	-	Taxpayer Relief Act of 1997 P.L. 105-34
24.4	2/	10/01/1997	21.44	2.86	0.1	-	-	Transportation Equity Act for the 21 st Century P.L. 105-178
GASOHOL 3/ 10 Percent Made with Ethanol								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
0		01/01/1979	-	-	-	-	-	Energy Tax Act of 1978 P.L. 95-618
4	1/	04/01/1983	3.56	0.44	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
4	1/	08/01/1984	3	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
3		01/01/1985	2	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
3.1		01/01/1987	2	1	0.1	-	-	Superfund Amendments and Reauthorization Act of 1986 P.L. 99-499
8.7		12/01/1990	4	1.5	0.1	2.5	0.6	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
13		10/01/1993	4	1.5	0.1	6.8	0.6	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
13		10/01/1995	3.5	2	0.1	6.8	0.6	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
12.9		01/01/1996	3.4	2	-	6.9	0.6	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508

Tax Rate		Effective Date	Distribution Of Tax					Source of Change
			Highway Trust Fund		Leaking Underground Storage Tank Trust Fund	General Fund For:		
			Highway Account	Mass Transit Account		Deficit Reduction	Not Specified	
13		10/01/1997	6.95	2.85	0.1	2.5	0.6	Taxpayer Relief Act of 1997 P.L. 105-34
13	2/	10/01/1997	6.94	2.86	0.1	2.5	0.6	Transportation Equity Act for the 21 st Century P.L. 105-178
13		12/21/2000	7.54	2.86	0.1	2.5	-	Consolidated Appropriations Act, 2001 P.L. 106-554
13.1		01/01/2001	7.64	2.86	0.1	2.5	-	Transportation Equity Act for the 21 st Century P.L. 105-178
13.2		01/01/2003	7.74	2.86	0.1	2.5	-	Transportation Equity Act for the 21 st Century P.L. 105-178
13.2		10/01/2003	10.24	2.86	0.1	-	-	Surface Transportation Extension Act of 2004, Part V P.L. 108-310
18.4	4/	01/01/2005	15.44	2.86	0.1	-	-	American Jobs Creation Act of 2004 P.L. 108-357
GASOHOL 3/ 7.7 Percent Made with Ethanol								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
9	1/	04/01/1983	8	1	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
9	1/	08/01/1984	8	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
9.1		01/01/1987	8	1	0.1	-	-	Superfund Amendments and Reauthorization Act of 1986 P.L. 99-499
14.1		12/01/1990	10	1.5	0.1	2.5	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
9.942		01/01/1993	5.842	1.5	0.1	2.5	-	Energy Policy Act of 1992 P.L. 102-486
14.242		10/01/1993	5.842	1.5	0.1	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
14.242		10/01/1995	5.342	2	0.1	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
14.142		01/01/1996	5.242	2	-	6.9	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
14.242		10/01/1997	8.792	2.85	0.1	2.5	-	Taxpayer Relief Act of 1997 P.L. 105-34
14.242	2/	10/01/1997	8.782	2.86	0.1	2.5	-	Transportation Equity Act for the 21 st Century P.L. 105-178
14.319		01/01/2001	8.859	2.86	0.1	2.5	-	Transportation Equity Act for the 21 st Century P.L. 105-178
14.396		01/01/2003	8.936	2.86	0.1	2.5	-	Transportation Equity Act for the 21 st Century P.L. 105-178
14.396		10/01/2003	11.436	2.86	0.1	-	-	Surface Transportation Extension Act of 2004, Part V P.L. 108-310
18.4	4/	01/01/2005	15.44	2.86	0.1	-	-	American Jobs Creation Act of 2004 P.L. 108-357
GASOHOL 3/ 5.7 Percent Made with Ethanol								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
9	1/	04/01/1983	8	1	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
9	1/	08/01/1984	8	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
9.1		01/01/1987	8	1	0.1	-	-	Superfund Amendments and Reauthorization Act of 1986 P.L. 99-499
14.1		12/01/1990	10	1.5	0.1	2.5	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
11.022		01/01/1993	6.922	1.5	0.1	2.5	-	Energy Policy Act of 1992 P.L. 102-486
15.322		10/01/1993	6.922	1.5	0.1	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
15.322		10/01/1995	6.422	2	0.1	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
15.222		01/01/1996	6.322	2	-	6.9	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
15.322		10/01/1997	9.872	2.85	0.1	2.5	-	Taxpayer Relief Act of 1997 P.L. 105-34
15.322	2/	10/01/1997	9.862	2.86	0.1	2.5	-	Transportation Equity Act for the 21 st Century P.L. 105-178
15.379		01/01/2001	9.919	2.86	0.1	2.5	-	Transportation Equity Act for the 21 st Century P.L. 105-178
15.436		01/01/2003	9.976	2.86	0.1	2.5	-	Transportation Equity Act for the 21 st Century P.L. 105-178

Tax Rate		Effective Date	Distribution Of Tax					Source of Change
			Highway Trust Fund		Leaking Underground Storage Tank Trust Fund	General Fund For:		
			Highway Account	Mass Transit Account		Deficit Reduction	Not Specified	
15.436		10/01/2003	12.476	2.86	0.1	-	-	Surface Transportation Extension Act of 2004, Part V P.L. 108-310
18.4	4/	01/01/2005	15.44	2.86	0.1	-	-	American Jobs Creation Act of 2004 P.L. 108-357
SPECIAL FUELS General Rates								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
9	1/	04/01/1983	8	1	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
9	1/	08/01/1984	8	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
9.1		01/01/1987	8	1	0.1	-	-	Superfund Amendments and Reauthorization Act of 1986 P.L. 99-499
14.1		12/01/1990	10	1.5	0.1	2.5	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
18.4		10/01/1993	10	1.5	0.1	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
18.4		10/01/1995	12	2	0.1	4.3	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
18.3		01/01/1996	12	2	-	4.3	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
18.4		10/01/1997	15.45	2.85	0.1	-	-	Taxpayer Relief Act of 1997 P.L. 105-34
18.4	2/	10/01/1997	15.44	2.86	0.1	-	-	Transportation Equity Act for the 21 st Century P.L. 105-178
SPECIAL FUELS Liquefied Petroleum Gas 5/								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
9	1/	04/01/1983	8	1	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
9	1/	08/01/1984	8	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
14		12/01/1990	10	1.5	-	2.5	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
18.3		10/01/1993	10	1.5	-	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
18.3		10/01/1995	12	2	-	4.3	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
13.6		10/01/1997	10.75	2.85	-	-	-	Taxpayer Relief Act of 1997 P.L. 105-34
13.6	2/	10/01/1997	11.47	2.13	-	-	-	Transportation Equity Act for the 21 st Century P.L. 105-178
18.3		10/01/2006	16.17	2.13	-	-	-	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users P.L. 109-59
18.3	5/	01/01/2016	15.42	2.88	-	-	-	Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 P.L. 114-41
SPECIAL FUELS Liquefied Natural Gas 6/								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
9	1/	04/01/1983	8	1	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
9	1/	08/01/1984	8	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
9.1		01/01/1987	8	1	0.1	-	-	Superfund Amendments and Reauthorization Act of 1986 P.L. 99-499
14.1		12/01/1990	10	1.5	0.1	2.5	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
18.4		10/01/1993	10	1.5	0.1	6.8	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
18.4		10/01/1995	12	2	0.1	4.3	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
18.3		01/01/1996	12	2	-	4.3	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
11.9		10/01/1997	9.05	2.85	-	-	-	Taxpayer Relief Act of 1997 P.L. 105-34

Tax Rate		Effective Date	Distribution Of Tax					Source of Change
			Highway Trust Fund		Leaking Underground Storage Tank Trust Fund	General Fund For:		
			Highway Account	Mass Transit Account		Deficit Reduction	Not Specified	
11.9	2/	10/01/1997	10.04	1.86	-	-	-	Transportation Equity Act for the 21 st Century P.L. 105-178
24.3		10/01/2006	22.44	1.86	-	-	-	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users P.L. 109-59
24.3	6/	10/01/2016	21.08	3.22	-	-	-	Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 P.L. 114-41
SPECIAL FUELS								
M85 and M100 with Methanol from Natural Gas 7/								
3		07/01/1956	3	-	-	-	-	Highway Revenue Act of 1956 P.L. 84-627
4		10/01/1959	4	-	-	-	-	Federal-Aid Highway Act of 1959 P.L. 86-342
9		04/01/1983	8	1	-	-	-	Surface Transportation Assistance Act of 1982 P.L. 97-424
4.5		08/01/1984	3.5	1	-	-	-	Deficit Reduction Act of 1984 P.L. 98-369
4.6		01/01/1987	3.5	1	0.1	-	-	Superfund Amendments and Reauthorization Act of 1986 P.L. 99-499
7.1		12/01/1990	4.25	1.5	0.1	1.25	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
11.4		10/01/1993	4.25	1.5	0.1	5.55	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
11.4		10/01/1995	5	2	0.1	4.3	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
11.3		01/01/1996	5	2	-	4.3	-	Omnibus Budget Reconciliation Act of 1990 P.L. 101-508
9.25		10/01/1997	6.3	2.85	0.1	-	-	Taxpayer Relief Act of 1997 P.L. 105-34
9.25	2/	10/01/1997	7.72	1.43	0.1	-	-	Transportation Equity Act for the 21 st Century P.L. 105-178
COMPRESSED NATURAL GAS 8/								
(See footnote for units)								
48.54		10/01/1993	-	-	-	48.54	-	Omnibus Budget Reconciliation Act of 1993 P.L. 103-66
48.54		10/01/1997	38.94	9.6	-	-	-	Taxpayer Relief Act of 1997 P.L. 105-34
48.54	2/	10/01/1997	38.83	9.71	-	-	-	Transportation Equity Act for the 21 st Century P.L. 105-178
18.3	8/	10/01/2006	16.981	1.319	-	-	-	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users P.L. 109-59
18.3	8/	10/01/2016	17.1	1.2	-	-	-	Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 P.L. 114-41

- 1/ The Surface Transportation Assistance Act of 1982 (Public Law 97-424) provided that the Mass Transit Account would receive one-ninth of the fuel tax proceeds. The Deficit Reduction Act of 1984 (Public Law 98-369) provided that the Mass Transit Account would receive 1 cent per gallon. For most fuels, the change had no practical effect.
- 2/ The Transportation Equity Act for the 21st Century retroactively revised the Mass Transit Account share of the fuel tax.
- 3/ Gasohol was not defined in Federal tax law prior to January 1, 1979. The products later defined as gasohol were taxable, to the extent they existed, under the provisions of the gasoline tax. Effective January 1, 1979, the Energy Tax Act of 1978 defined gasohol to be a blend of gasoline and at least 10 percent (by volume) alcohol, excluding alcohol made from petroleum, natural gas, or coal. Blends with less than 10 percent alcohol were taxable as gasoline. The Energy Policy Act of 1992 expanded the definition of gasohol effective January 1, 1993. Under that Act, the product now called 10-percent gasohol corresponds to the definition under the Energy Tax Act of 1978. The Energy Policy Act of 1992 also defined two additional types of gasohol. The term 7.7 percent gasohol includes gasoline-alcohol blends where the alcohol content is at least 7.7 percent but less than 10 percent. The term 5.7 percent gasohol includes gasoline-alcohol blends where the alcohol content is at least 5.7 percent but less than 7.7 percent. The rates shown are for gasohol made with ethanol. Different rates applied to gasohol made with methanol, but such blends were never in common use.
- 4/ Effective January 1, 2005, gasohol's partial exemption from the gasoline tax was replaced by an equivalent excise tax credit paid from the General Fund of the Treasury. No further history on the credit is provided.
- 5/ Prior to January 1, 2016, the liquefied petroleum gas (LPG) tax rates are in cents per gallon. Effective January 1, 2016, the rates are expressed in cents per gasoline-equivalent gallon. One gallon of gasoline has equivalent energy content to 1.353 gallons of LPG.
- 6/ Prior to January 1, 2016, the liquefied natural gas (LNG) tax rates are in cents per gallon. Effective January 1, 2016, the rates are expressed in cents per diesel-equivalent gallon. One gallon of diesel fuel has equivalent energy content to 1.71 gallons of LNG.
- 7/ The rates shown are for gasoline-alcohol blends where the alcohol is methanol produced from natural gas. Other rates apply to blends where the alcohol is ethanol or is methanol produced from sources other than natural gas.
- 8/ Prior to October 1, 1993, compressed natural gas (CNG) was not taxed. From October 1, 1993 through September 30, 2006, CNG was taxed at 48.54 cents per thousand cubic feet. Effective October 1, 2006, the tax rate for compressed natural gas is 18.3 cents per gasoline-equivalent gallon. The Internal Revenue Service determined that one gallon of gasoline was energy equivalent to 126.67 cubic feet. Effective January 1, 2016, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 specified that one gallon of gasoline was energy equivalent to 123.57 cubic feet of CNG.

Endnotes

- ¹ In the government-wide Federal budgetary context, the term “apportionment” is at times used to refer to the action by which the Office of Management and Budget (OMB) distributes amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account.
- ² TEA-21 was enacted on June 9, 1998. A technical correction act to the TEA-21 was included as Title IX of Public Law 105-206, the Internal Revenue Restructuring and Reform Act of 1998, enacted July 22, 1998. Title IX is cited as the “TEA 21 Restoration Act.”
- ³ 23 U.S.C. 167(i).
- ⁴ 23 U.S.C. 117.
- ⁵ The Legislative Reorganization Act of 1946.
- ⁶ Although there are additional steps between committee approval and consideration on the floor of Congress, such as passing through the Rules Committee in the House, they are omitted for brevity.
- ⁷ There are two other forms of budget authority: borrowing authority and authority related to the use of offsetting receipts and collections. These are not discussed in this document.
- ⁸ Section 4 of Public Law 67-244, enacted June 19, 1922.
- ⁹ Section 401(d)(1)(B) of Public Law 93-344.
- ¹⁰ Beginning in FY 2008, the revenues from highway-user taxes deposited in the Highway Account of the Highway Trust Fund were insufficient to support the levels of funding authorized for the FAHP and other programs from the Highway Account (see Chapter 7 of this report for more information). The result was that less than 90 percent of the Highway Account receipts were attributable to highway-user taxes. Despite that fact, the Congress continued to authorize contract authority for the FAHP. This was possible for one of two reasons: (1) no one raised a point of order against the bill authorizing contract authority; or (2) Congress agreed to waive any point of order against the bill.
- ¹¹ In lieu of an explicit mention of 23 U.S.C. 118(a), Congress will at times instead use a more general reference to a program’s funding being “available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23”; see, for example, section 1119(g)(2) of Public Law 109-59. This also makes the funding contract authority.
- ¹² Section 1123 of Public Law 114-94.
- ¹³ Section 1437 of Public Law 114-94.
- ¹⁴ 23 U.S.C. 118(a).
- ¹⁵ If FHWA apports funds in a manner inconsistent with statute, GAO has opined that the Agency must adjust the apportionments appropriately (41 Comp. Gen. 16 (1961)).

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- ¹⁶ 23 U.S.C. 119(f)(1)(A)(ii).
- ¹⁷ 23 U.S.C. 144(h)(5).
- ¹⁸ 23 U.S.C. 116(d).
- ¹⁹ 23 U.S.C. 505.
- ²⁰ 23 U.S.C. 133(h).
- ²¹ 23 U.S.C. 133(f).
- ²² Section 1437 of Public Law 114-94.
- ²³ 23 U.S.C. 133(d)(1)(A).
- ²⁴ 23 U.S.C. 133(d)(4)(A).
- ²⁵ 23 U.S.C. 133(d)(6).
- ²⁶ 23 U.S.C. 133(d)(1)(B).
- ²⁷ 23 U.S.C. 133(h)(5).
- ²⁸ 23 U.S.C. 133(h)(2).
- ²⁹ Section 1101(b)(3) of Public Law 114-94.
- ³⁰ Codified in title 23 as the Nationally Significant Freight and Highway Projects program (23 U.S.C. 117).
- ³¹ Section 1702 of Public Law 109-59.
- ³² Section 1934 of Public Law 109-59.
- ³³ Section 10212 of Public Law 109-59.
- ³⁴ Section 1302 of Public Law 109-280 and sections 101(s)(4) and 112 of Public Law 110-244.
- ³⁵ Section 413 of Public Law 111-147.
- ³⁶ The deficit target amounts were amended and the target for a zero deficit delayed until FY 1993 by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.
- ³⁷ Certain programs were exempt from sequester, including Social Security, Medicaid, veteran's compensation, Aid to Families with Dependent Children, food stamps, and others. Certain health care programs, such as Medicare and veterans' health care, were subject to sequester, but the percentage that could be sequestered was capped.
- ³⁸ 23 U.S.C. 106(a).
- ³⁹ 23 U.S.C. 118(b)(2).
- ⁴⁰ 23 U.S.C. 118(b)(2).
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⁴¹ 23 U.S.C. 120.

⁴² 23 U.S.C. 120(a).

⁴³ 23 U.S.C. 120(b).

⁴⁴ 23 U.S.C. 120(e).

⁴⁵ 23 U.S.C. 143.

⁴⁶ 23 U.S.C. 120(c)(1).

⁴⁷ 23 U.S.C. 120(c)(3).

⁴⁸ For many years Federal law prohibited the use of tapered match by making each individual progress payment subject to the project-specific Federal share. However, section 1302(2) of the Transportation Equity Act for the 21st Century (Public Law 105-178) struck that provision of law—and with it the prohibition on tapered match.

⁴⁹ 23 U.S.C. 121(b).

⁵⁰ 23 U.S.C. 323.

⁵¹ 23 U.S.C. 120(i).

⁵² 23 U.S.C. 120(j).

⁵³ 23 U.S.C. 120(k).

⁵⁴ 23 U.S.C. 206(f)(4).

⁵⁵ 23 U.S.C. 206(f)(3).

⁵⁶ Public Law 93-344, enacted July 12, 1974.

⁵⁷ Section 1102(b) of Public Law 114-94.

⁵⁸ See for example section 120 of Division L of Public Law 114-113, the Consolidated Appropriations Act, 2016.

⁵⁹ Section 1102(c)(1) of Public Law 114-94.

⁶⁰ Section 1102(c)(3) of Public Law 114-94.

⁶¹ Section 1102(e) of Public Law 114-94.

⁶² Section 1102(c) of Public Law 114-94.

⁶³ Section 1102(d) of Public Law 114-94.

⁶⁴ Section 1102(f) of Public Law 114-94.

⁶⁵ This is a rare occurrence. The last such action was in 1980 when an additional \$1.4 billion in liquidating cash was provided by the Supplemental Appropriations and Rescission Act, 1980 (Public Law 96-304).

⁶⁶ 23 U.S.C. 121(c).

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- ⁶⁷ The Federal-aid Primary and Secondary Systems were the roads eligible for Federal assistance at the time.
- ⁶⁸ Most fuel taxes continue at the rate of 4.4 cents per gallon after this date and the heavy vehicle use tax continues through September 30, 2023, but deposit of the proceeds in the Highway Trust Fund ceases after September 30, 2022.
- ⁶⁹ The Surface Transportation Assistance Act of 1982 required one-ninth of the fuel tax revenue collected at that time—about 1 cent per gallon—to be deposited in the Mass Transit Account. This provision has been amended several times, and the “one-ninth” ratio no longer applies. Effective October 1, 1997, the deposit to the Mass Transit Account is 2.86 cents per gallon of most taxable highway motor fuels.
- ⁷⁰ Effective January 1, 1987, the Leaking Underground Storage Tank Trust Fund was established and an additional tax of 0.1 cent per gallon on highway and other fuels was dedicated to this fund.
- ⁷¹ In the case of gasohol and certain other alcohol blends, the 2.5 cents per gallon continued to be directed to the General Fund.
- ⁷² Motor Carrier Safety Act of 1984, codified in 49 U.S.C. 521.
- ⁷³ Section 9503(b)(5) of the Internal Revenue Code of 1986, classified to 26 U.S.C 9503(b)(5).
- ⁷⁴ Section 9503(b)(5) of the Internal Revenue Code of 1986, classified to 26 U.S.C. 9503(b)(5).
- ⁷⁵ Section 9602(b) of the Internal Revenue Code of 1986, classified to 26 U.S.C. 9602(b).
- ⁷⁶ Section 9004(a) of Public Law 105-178 prohibited crediting interest to the Highway Trust Fund. Section 441 of Public Law 111-147 subsequently eliminated this prohibition, re-instating the Trust Fund’s ability to collect interest.
- ⁷⁷ Section 9601 of the Internal Revenue Code of 1986, classified to 26 U.S.C. 9601. The law requires deposits to be made at least monthly, and the practice is to make such deposits twice each month.
- ⁷⁸ 23 U.S.C. 104(c)(1)(B).
- ⁷⁹ Section 2002 of Public Law 114-41, amending section 9503(f) of the Internal Revenue Code of 1986, as in effect on July 31, 2015.
- ⁸⁰ Previously called the Aquatic Resources Trust Fund
- ⁸¹ Section 9503(c) of the Internal Revenue Code of 1986, classified to 26 U.S.C. 9503(c).
- ⁸² Aviation kerosene used in commercial aviation is taxed at 4.4 cents per gallon and fuel used in noncommercial (general) aviation is taxed at 21.9 cents per gallon. Each of these rates include the 0.1 cent per gallon for the LUST Trust Fund).
- ⁸³ The Byrd Amendment is named for Senator Harry Flood Byrd of Virginia who was a member of the Senate Finance Committee at the time the Highway Revenue Act of 1956 was being debated. His concern for the future solvency of the Highway Trust Fund led to the amendment of the bill.
- ⁸⁴ The Rostenkowski Rule is named for Representative Dan Rostenkowski of Illinois, who chaired the House Committee on Ways and Means during the creation of the Mass Transit Account.
- ⁸⁵ Section 11102 of Public Law 109-59.
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⁸⁶ Section 9503(d) of the Internal Revenue Code of 1986, classified to 26 U.S.C. 9503(d).

⁸⁷ For example, the Highway Account balance dropped dramatically enough during FY 2008 to lead Congress to transfer in additional cash from the General Fund. However, throughout that entire period, the Highway Account continued to pass the Byrd Test.

